

IAV8KET1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 00243 (SHS)

5 ANDREW OWIMRIN, a/k/a "Andrew Owens,"
a/k/a "Jonathan Stewart," and
6 SHAHRAM KETABCHI, a/k/a "Steve Katabchi,"

7 Defendants.

8 -----x
9 October 31, 2018
9:40 a.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge
13 and a jury

14 APPEARANCES

15 GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

16 KIERSTEN A. FLETCHER

17 ROBERT B. SOBELMAN

BENET J. KEARNEY

18 Assistant United States Attorneys

SAM A. SCHMIDT

19 ABRAHAM J. ABEGAZ-HASSEN

20 Attorneys for Defendant Owimrin

KENNETH A. PAUL

JACOB MITCHELL

22 Attorneys for Defendant Katabchi

Also Present:

CHRISTOPHER BASTOS, Detective NYPD and HSI

CHRISTINE LEE, Paralegal Specialist USAO

SAMUEL TUREFF, Paralegal

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1 (Trial resumed; jury not present)

2 THE COURT: The jury is here. Bring the jury in.

3 Mr. Bolus will be called, is that correct?

4 MR. SOBELMAN: Yes, your Honor.

5 THE COURT: 15 to 20 minutes?

6 MR. SOBELMAN: Yes, your Honor.

7 (Jury present)

8 THE COURT: Please be seated.

9 Good morning, ladies and gentlemen. Thank you for
10 being here in a timely fashion. It looks like I am the only
11 one in a costume today.

12 Let's proceed. Call your next witness, government.

13 MR. SOBELMAN: The government calls Thomas Bolus.

14 THE COURT: Sir, if you would raise your right hand
15 and speak to my deputy.

16 THOMAS BOLUS,

17 called as a witness by the government,

18 having been duly sworn, testified as follows:

19 THE DEPUTY CLERK: State your full name and spell your
20 last name for the record.

21 THE WITNESS: Thomas Bolus, B-O-L-U-S.

22 THE COURT: Good morning. Welcome. Please be seated.

23 Your witness.

24 (Continued on next page)

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Bolus - Direct

1 DIRECT EXAMINATION

2 BY MR. SOBELMAN:

3 Q. Good morning, Mr. Bolus.

4 A. Good morning.

5 Q. Where do you work?

6 A. I work at the Internal Revenue Service in Scranton,
7 Pennsylvania.

8 Q. Is the Internal Revenue Service also known as the IRS?

9 A. Yes, it is.

10 Q. What is your title at the IRS?

11 A. I am a court witness coordinator with the Internal Revenue
12 Service.

13 Q. How long have you worked at the IRS?

14 A. For over 13 years.

15 Q. What are your duties and responsibilities with the IRS?

16 A. As a court witness coordinator, I represent the
17 commissioner of the Internal Revenue Service in the
18 commissioner's custodial duties, I gather and retrieve
19 documents, both electronic and paper, and I prepare those
20 documents for presentation in federal criminal trials.

21 Q. In general terms, what are the activities of the IRS?

22 A. The activities of the IRS is to provide America's taxpayers
23 with top quality service by helping them understand and meet
24 their tax responsibilities and apply the law with fairness.

25 Q. Are you familiar with the names Andrew Owimrin and Shahram

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Bolus - Direct

1 Katabchi?

2 A. Yes, I am.

3 Q. How are you familiar with them?

4 A. I am familiar with their names as being assigned to assist
5 on this trial just a couple of weeks ago.

6 Q. Generally, are individuals required to report their income
7 to the IRS on an annual basis?

8 A. Yes, they are.

9 Q. How does income get reported to the IRS?

10 A. The income comes in and is reported to the IRS by payers,
11 such as banks, financial institutions, mortgage and lending
12 companies, and then the persons that receive that money, the
13 taxpayers, then have to reconcile that income annually on the
14 Form 1040 every year.

15 Q. If someone has income that isn't reported by an employer,
16 are they required to report that income themselves to the IRS?

17 A. Yes, they would be.

18 MR. SCHMIDT: Leading.

19 THE COURT: Sustained. Move on.

20 Q. Mr. Bolus, are there requirements that apply to individuals
21 in the event that an employer does not report income for an
22 individual?

23 A. Yes, there are.

24 Q. What types of requirements?

25 A. Well, any income that a person receives, no matter the

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Bolus - Direct

1 source, is reportable to the IRS.

2 Q. When you say reportable, does that mean required to be
3 reportable?

4 A. Required on the Form 1040.

5 Q. Are individuals required to file taxes with the IRS on an
6 annual basis?

7 A. Yes, they are.

8 Q. Approximately what is the amount of income one must have
9 for an individual person to be required to file taxes in a
10 given year?

11 A. Well, it goes by their filing status, whether single,
12 married, head of household, but most single filers, for
13 instance under the age of 65, are required to file if they have
14 earnings of about \$10,000.

15 MR. SOBELMAN: Ms. Lee, could you please show the
16 witness what have been marked for identification as Government
17 Exhibits 823, 824, 825 and 826.

18 Q. Mr. Bolus, did you have an opportunity to review these
19 exhibits in preparation for your testimony today?

20 A. Yes, I did.

21 Q. What are these?

22 A. These documents are forms 1040 and information returns
23 provided to this court by the Internal Revenue Service's
24 disclosure office for Andrew Owimrin and Shahram Katabchi.

25 Q. Are these four exhibits true and accurate copies of records

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Bolus - Direct

1 from the IRS?

2 A. Yes, they are.

3 Q. Were these documents made at or near the time by or from
4 information transmitted by someone with knowledge of the
5 information contained in the documents?

6 A. Yes, they were.

7 Q. Were these documents kept in the course of a regularly
8 conducted activity of the IRS?

9 A. Yes, they are.

10 Q. Is keeping and maintaining these types of records a regular
11 practice of the IRS?

12 A. Yes, it is.

13 MR. SOBELMAN: Your Honor, the government offers
14 Government Exhibits 823, 824, 825 and 826.

15 THE COURT: Hearing no objection, admitted.

16 Those are admitted pursuant to 803(6).

17 (Government's Exhibits 823, 824, 825 and 826 received
18 in evidence)

19 MR. SOBELMAN: Ms. Lee, please show the witness what
20 have been marked as Government Exhibits 821 and 822.

21 Q. Mr. Bolus, did you have an opportunity to review these
22 exhibits in preparation for your testimony today?

23 A. Yes, I did.

24 Q. What are these?

25 A. These are certification of lack of record; they are IRS

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Bolus - Direct

1 forms 3050. These forms are used when we are asked to conduct
2 a search of any tax information that may be reported or exist
3 on persons; and then if there is no information, we provide
4 this form and list that information that we searched for but
5 could not find.

6 Q. Are Government Exhibits 821 and 822 true and accurate
7 copies of documents created by the IRS?

8 A. Yes, they are.

9 MR. SOBELMAN: The government offers Government
10 Exhibits 821 and 822.

11 THE COURT: Hearing no objection, admitted.

12 (Government's Exhibits 821 and 822 received in
13 evidence)

14 MR. SOBELMAN: Ms. Lee, please show the witness what
15 is marked for identification as Government Exhibit 827.

16 Q. Mr. Bolus, do you recognize this?

17 A. Yes, I do.

18 Q. What is it?

19 A. This document is a spreadsheet that's a summarization of
20 Shahram Katabchi's tax filings for the years 2013 through 2017.

21 The second column lists the IRS income thresholds for
22 persons that are 65 years or younger that are single.

23 And then the third column is any income that the IRS
24 was informed about by employers, financial institutions and
25 banks on the information return processing program.

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Bolus - Direct

1 Q. Let me just stop you there. Does the information contained
2 on this chart come from what are now in evidence as Government
3 Exhibits 822, 824 and 826?

4 A. Yes.

5 Q. Did you also include the income threshold for filing taxes
6 in the relevant years?

7 A. Yes, I did.

8 Q. Where did you get that information?

9 A. From IRS -- actually, from the IRS Web site, and then
10 through publications that are produced annually by the IRS to
11 inform the public.

12 Q. Does this chart accurately reflect the information that is
13 summarized?

14 A. Yes, it does.

15 MR. SOBELMAN: The government offers Government
16 Exhibit 827.

17 THE COURT: Admitted without objection.

18 (Government's Exhibit 827 received in evidence)

19 MR. SOBELMAN: Ms. Lee, can you please display what is
20 now in evidence as Government Exhibit 827.

21 Q. Mr. Bolus, can you just explain what we see in this chart?

22 A. So Exhibit 827 is a summarization for Shahram Katabchi for
23 the tax years 2013 through 2017, as listed in column one.

24 The second column indicates the threshold filing or
25 the filing requirement amount for those particular tax years.

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Bolus - Direct

1 Then the third column indicates any reported income
2 that the IRS received from financial institutions, banks,
3 mortgages lending companies, employers, etc.

4 And the fourth column just indicates whether Mr.
5 Ketabchi filed a tax return for those particular years or not.

6 Q. Let's just focus on 2015 and 2016 for the moment.

7 For the year 2015, how much was the threshold of
8 income for someone that they are required to pay taxes as an
9 individual under 65 years of age?

10 A. \$10,300.

11 Q. And how much income was reported for Shahram Katabchi to
12 the IRS by his employers for the tax year 2015?

13 A. \$21,954.

14 Q. Was he therefore required to file taxes that year?

15 A. Yes.

16 Q. Moving to the last column, did he file taxes that year?

17 A. He, did not.

18 Q. Let's look at 2016. How much was the income threshold for
19 that year?

20 A. \$10,340.

21 Q. How much income was reported to the IRS by his employers
22 that year?

23 A. \$13,538.

24 Q. And did he file taxes that year?

25 A. No, he did not.

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Bolus - Direct

1 Q. Was he required to do so?

2 A. Yes.

3 Q. Based on your review of the tax documents that you
4 discussed and that are now in evidence, did Shahram Katabchi
5 disclose any income in addition to that disclosed by his
6 employers for any of these five years?

7 A. No, he did not.

8 Q. Based on your review of the tax documents now in evidence,
9 did A1 Business Consultants report any income for Shahram
10 Katabchi for any of these five years?

11 A. No, they did not.

12 Q. Based on your review of the tax documents now in evidence,
13 did a company named Element Business Services report any income
14 for Shahram Katabchi for any of these five years?

15 A. No, they did not.

16 Q. Based on your review of the tax documents now in evidence,
17 did a company named Elevated Business Consultants report any
18 income for Shahram Katabchi for any of these five years?

19 A. No, they did not.

20 Q. Do be clear, did Shahram Katabchi himself report any income
21 to the IRS for any of those three businesses for any of these
22 five years?

23 A. No, he did not.

24 Q. Now, if Shahram Katabchi had been paid by one of those
25 businesses by check or wire transfer or in cash, would the IRS

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Bolus - Direct

1 automatically know about that?

2 MR. PAUL: Objection.

3 THE COURT: Sustained.

4 Q. In general, is the IRS notified when someone is paid by
5 cash or check or wire transfer automatically?

6 MR. PAUL: Objection.

7 THE COURT: I will allow it.

8 Q. You may answer.

9 A. Not all the time, sir.

10 Q. How might they learn -- you explained earlier, how do they
11 learn about people's income?

12 A. Well, the IRS information return processing program by law
13 requires employers, financial institutions, mortgage lending
14 companies to report to the IRS annually any wages, income or
15 extra money that a person would have received during that tax
16 year.

17 Q. If an individual receives a wire transfer of funds from an
18 employer, from their employer, and the employer does not report
19 it and the individual does not report it to the IRS, does the
20 IRS automatically somehow learn of that wire transfer?

21 MR. SCHMIDT: Objection.

22 A. No.

23 THE COURT: Just a moment.

24 I will allow it.

25 Q. Same question with respect to a cash deposit. Would the

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Bolus - Direct

1 IRS automatically learn about it in that situation?

2 A. It would depend on the amount of the cash deposit. Then
3 the bank or the financial institution may be required to report
4 that information to the IRS.

5 Q. If it's under \$10,000, would they be required to report it?

6 A. No.

7 Q. When I say under \$10,000, meaning per transaction, not in
8 aggregate?

9 A. That's correct. That would be pertaining to those banks or
10 financial institutions where that money may have been
11 deposited.

12 Q. Same question with respect to a check. If an employer
13 wrote a check to an employee and the employee deposited it or
14 cashed that check, would the IRS automatically know about that
15 check if the employer and the employee did not report it to the
16 IRS?

17 A. No.

18 Q. Do you know whether Shahram Katabchi had additional income
19 for 2015 or 2016 that was not reported to the IRS?

20 MR. PAUL: Objection.

21 A. No, I don't.

22 THE COURT: I will allow it.

23 Q. Why don't you know that?

24 A. Because I only know what was reported to the IRS through
25 the information return processing program.

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Bolus - Direct

1 MR. SOBELMAN: Ms. Lee, could you please show the
2 witness what is marked as Government Exhibit 828.

3 Q. Do you recognize this?

4 A. Yes, I do.

5 Q. What is it?

6 A. So this document Exhibit 828, again, similar to the last
7 exhibit that we looked at, is a summarization for Andrew
8 Owimrin for the tax years 2013 through 2017.

9 Q. Does this chart contain information from Government
10 Exhibits 821, 823 and 825 that are now in evidence?

11 A. Yes, it does.

12 Q. Does this chart accurately reflect the information that's
13 summarized?

14 A. Yes, it does.

15 MR. SOBELMAN: The government offers Government
16 Exhibit 827.

17 MR. SCHMIDT: No objection.

18 MR. SOBELMAN: Sorry. 828.

19 THE COURT: 828 is admitted.

20 (Government's Exhibit 828 received in evidence)

21 MR. SOBELMAN: Ms. Lee, could you please display 828.

22 Q. Mr. Bolus, let's just focus on 2014 through 2016 for a
23 moment.

24 For 2014, what was the IRS income threshold for filing
25 taxes?

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Bolus - Direct

1 A. \$10,150.

2 Q. How much income was reported to the IRS by employers for
3 that year for Andrew Owimrin?

4 A. \$56,299.

5 Q. Was Mr. Owimrin required to file taxes that year?

6 A. Yes.

7 Q. Did he?

8 A. No.

9 Q. For the tax year 2015, what was the IRS income threshold
10 for filing taxes?

11 A. \$10,300.

12 Q. And how much income was reported to the IRS by Mr.
13 Owimrin's employers for that year?

14 A. \$72,549.

15 Q. Was he required to file taxes that year?

16 A. Yes.

17 Q. Did he?

18 A. No.

19 Q. For 2016, what was the IRS income threshold for filing
20 taxes?

21 A. \$10,340.

22 Q. How much income was reported to the IRS for Mr. Owimrin's
23 employers?

24 A. \$20,212.

25 Q. Was he required to file taxes?

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Bolus - Direct

1 A. Yes.

2 Q. Did he?

3 A. No.

4 Q. Based on your review of the tax documents now in evidence,
5 was most of the income that Mr. Owimrin reported from one
6 source, or was it from many different sources, or somewhere in
7 between?

8 A. A few sources, sir.

9 Q. What were the principal sources of his income?

10 A. Al Business Consultants, I believe was the title, and Olive
11 Branch Marketing LLC.

12 Q. If he had been paid by one of those businesses by check or
13 wire transfer or cash and they hadn't reported it to the IRS,
14 would the IRS somehow automatically become aware of those
15 payments?

16 A. No, they wouldn't.

17 Q. If he had been paid that way and his employer did not
18 report some of that income, would he himself have been required
19 to report that part of that income?

20 A. Yes, he would.

21 Q. Do you know whether Mr. Owimrin had any additional income
22 for 2014, 2015 or 2016 that was not reported to the IRS?

23 A. The IRS is not aware of any other income, sir.

24 Q. Why don't you know about it?

25 A. Because it was not reported to the IRS by either financial

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Bolus - Cross

1 institutions or by Mr. Owimrin himself.

2 Q. Aside from reviewing the tax documents that I have asked
3 you about, did you have any other involvement in the
4 investigation of this case?

5 A. No, I did not.

6 MR. SOBELMAN: No further questions.

7 THE COURT: Any cross-examination of this witness?

8 Mr. Schmidt.

9 CROSS-EXAMINATION

10 BY MR. SCHMIDT:

11 Q. Now, the column on 828 that says income reported to the IRS
12 by employers, I assume that would come from -- withdrawn.

13 What form would the employers file for the income to
14 be reported?

15 A. So that column could derive from, and did derive from,
16 multiple documents, such as wage documents, W-2 forms, also
17 1099 forms for contractor payments made to Mr. Owimrin.

18 Q. When it's paid in a W-2 form, taxes are withheld, is that
19 right?

20 A. Yes, sir.

21 Q. When it's paid --

22 THE COURT: They are withheld by the employer?

23 THE WITNESS: That's correct, sir.

24 MR. SCHMIDT: Thank you, your Honor.

25 Q. And when income is received as a contractor by way of a

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Bolus - Cross

1 1099, the employer does not withhold any money, is that
2 correct?

3 A. That's correct.

4 THE COURT: Would you tell the jury what a 1099 form
5 is.

6 THE WITNESS: A form 1099 is a miscellaneous payment
7 by institutions, or it could be a person that pays someone for
8 contracted work other than a regular full-time employee.

9 Q. It's also sometimes done by employers to avoid paying
10 payroll taxes and calling somebody not an employee but an
11 independent contractor?

12 A. I don't know that, sir.

13 Q. Do you know offhand how much of the income in 2014, '15 and
14 '16 were by W-2?

15 A. Not without looking at it, but I if could see the exhibit I
16 could tell you exactly.

17 Q. The other exhibit it shows that?

18 A. Yes, sir.

19 Q. Do you know if the form filed by the employer on the 1099
20 is accurate?

21 A. It's as accurate as is reported to the IRS, sir.

22 Q. All it is is that the employer reports the amount, right,
23 and the IRS accepts that for the purposes of the tax returns
24 unless they get other information, right?

25 A. Yes, sir.

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Bolus - Cross

1 Q. So the government asked you questions whether or not Mr.
2 Owimrin received other income other than what is stated on this
3 form. Do you remember that?

4 A. Yes, sir.

5 Q. Also, you don't know whether Mr. Owimrin was required to
6 pay back some of the income received from his employer, do you?

7 A. I do not know that.

8 MR. SCHMIDT: I have no further questions.

9 THE COURT: Mr. Paul.

10 MR. PAUL: Just a couple, sir.

11 CROSS-EXAMINATION

12 BY MR. PAUL:

13 MR. PAUL: Can we pull up Exhibit 827, please.

14 Q. Sir, so I understand, looking at 2014, there is a threshold
15 of \$10,150, is that right?

16 A. Yes, sir.

17 Q. So there was no requirement on the part of Mr. Katabchi to
18 file taxes on that year, correct?

19 A. No requirement based on the income that the IRS received by
20 payors.

21 Q. Then 2015 there is a \$10,300 threshold, correct?

22 A. That's correct, sir.

23 Q. And he is approximately what, 11,000 plus over that
24 threshold?

25 A. Yes, sir.

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Bolus - Cross

1 Q. So that's the difference of what he should have been -- he
2 should have been reporting, in other words, because of that
3 threshold amount?

4 A. Yes, sir.

5 THE COURT: Just a moment.

6 THE WITNESS: If I could reanswer the question.

7 THE COURT: Is \$11,000, that is, the difference
8 between the threshold and the income reported by employers,
9 what he is liable for?

10 THE WITNESS: The full amount \$21,954 he is liable
11 for.

12 Q. But he is over that threshold by approximately \$11,000 in
13 order to have to file a tax return, right?

14 A. Yes, sir.

15 Q. The same with 2016, he is about \$3,000 over the threshold?

16 A. Yes.

17 Q. As a consequence, he was supposed to file his return and
18 did not, is that your testimony?

19 A. Yes, sir.

20 Q. Now, do you know what employers specifically notified the
21 IRS about, for example, 2015 where there was income of 21,954?

22 A. Yes.

23 Q. What employers were they?

24 A. If I could see the exhibits, they would be in 822 through
25 826.

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Bolus - Cross

1 MR. PAUL: Can we put up 822?

2 Q. Does that help you?

3 A. No, sir. The next one.

4 Q. Go to the next one.

5 A. And the next.

6 This document will help me if --

7 Q. If we can see it, right?

8 A. Yes.

9 Q. Does help you?

10 A. Yes, sir.

11 Q. What employers were filing with the IRS for payments that
12 were sent to Mr. Katabchi?

13 A. So this document reflects the information returns
14 processing transcript for Shahram Katabchi, and it was received
15 from Lyft, Inc. in the amount of \$8,525.

16 Q. So we still have a balance to go, right?

17 A. Yes, sir. And this was submitted by Form 1099Ks which are
18 third-party payor documents.

19 Q. And that was, you said from Lyft, correct?

20 A. Yes, sir.

21 Q. And the balance of reporting to the IRS from employers, we
22 have to go to the next document?

23 A. Yes, sir.

24 Q. Tell us when.

25 I don't think that answers it.

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Bolus - Cross

1 A. No, sir.

2 Q. Can we go to the next one.

3 The next page, I think.

4 The next page, correct?

5 A. Correct.

6 Q. The next page.

7 A. I would be looking for the information return processing
8 transcript, sir. It's the computer printout, the first form we
9 were just talking about.

10 Q. So that's what we are looking for?

11 A. Yes, sir.

12 Q. Go to the next page.

13 Tell us when we get there.

14 A. You may have to start from the beginning.

15 Q. I apologize.

16 A. It might be early on.

17 MR. PAUL: Can we go to the earlier exhibits.

18 MR. MITCHELL: Can we go back to 824 and then go to
19 page 3.

20 MR. PAUL: Thank you.

21 THE COURT: Is that the page we just saw?

22 MR. MITCHELL: No.

23 THE COURT: I am asking the witness that.

24 MR. MITCHELL: Sorry, your Honor.

25 THE WITNESS: No, it's not, sir.

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Bolus - Cross

1 Q. What does this exhibit show?

2 A. This is also an information return processing transcript
3 for Shahram Katabchi, and this shows income from Lyft, Inc. of
4 \$3,136.

5 Q. Are we at the total yet of 29,954?

6 A. Not yet, sir.

7 Q. Do you know as you sit here what the balance consisted of,
8 where it came from, what employer?

9 A. Multiple, sir.

10 Q. Sorry?

11 A. There were multiple employers.

12 Q. Were they all regarding taxi driving, as best as you can
13 recall?

14 A. No, sir, they didn't. I'd have to see them again to verify
15 that.

16 Q. Let me show you 824. Why don't you look through this
17 exhibit.

18 A. Thank you, sir.

19 Sir, what tax year are you talking about in
20 particular?

21 Q. I am talking about 2015. Do you have those documents?

22 A. Yes.

23 Q. That's the first one we were talking about.

24 THE COURT: Is your question what employers reported
25 giving Shahram Katabchi income in 2015?

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Bolus - Cross

1 MR. PAUL: Correct.

2 THE COURT: So we know Lyft already.

3 MR. PAUL: Correct.

4 A. Rasier LLC at \$19,734.

5 Then Rasier again had \$2,220.

6 Q. This is in 2015?

7 A. Yes, sir.

8 Q. What is Rasier, do you know?

9 A. It says Rasier Lyft. I don't know exactly without looking
10 up the merchant category code on it.

11 THE COURT: Is Lyft spelled L-Y-F-T?

12 THE WITNESS: Yes.

13 THE COURT: So it's Rasier Lyft?

14 THE WITNESS: Yes, sir.

15 Q. Is that, as far as you know, a cab service?

16 A. I do not.

17 Q. Can we turn to 2016? Do you have those documents in front
18 of you? Is that part of that exhibit?

19 A. Yes, it is.

20 Q. And there was \$13,538 reported by employers. Do you know
21 which employers reported that?

22 A. \$750 by Lyft, Inc. \$896 by Rasier, Inc.

23 THE COURT: Is that different? Is that Rasier Lyft,
24 Inc. or Rasier, Inc.?

25 THE WITNESS: They are listed -- one is an LLC and one

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Bolus - Cross

1 says Inc., your Honor.

2 THE COURT: All right.

3 A. Then there is Lyft, Inc. has \$3,136.

4 Uber Technology, it says \$360.

5 Then Rasier, LLC has 8,396.

6 Q. You have heard of Uber, have you not?

7 A. Yes, I have.

8 Q. That's a taxi service?

9 A. Yes.

10 Q. You're not sure what Lyft is?

11 A. I do not know what Lyft is, sir.

12 Q. Do you know if Rasier is connected to Uber at all?

13 A. I do not know, sir.

14 MR. PAUL: I have nothing further.

15 THE COURT: Government, anything?

16 MR. SOBELMAN: No further questions, your Honor.

17 THE COURT: Thank you, Mr. Bolus. You may step down.

18 You are excused.

19 (Witness excused)

20 THE COURT: Next witness for the government.

21 MS. KEARNEY: The government calls Hayley Kronthal.

22 HAYLEY KRONTHAL,

23 called as a witness by the government,

24 having been duly sworn, testified as follows:

25 THE DEPUTY CLERK: State your full name and spell your

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Kronthal - Direct

1 name for the record.

2 THE WITNESS: Hayley Kronthal, H-A-Y-L-E-Y,
3 K-R-O-N-T-H-A-L.

4 THE COURT: Good morning, Ms. Kronthal. Welcome.
5 Your witness.

6 DIRECT EXAMINATION

7 BY MS. KEARNEY:

8 Q. Good morning, Ms. Kronthal.

9 A. Good morning.

10 Q. Where do you work?

11 A. I work at the U.S. Attorney's Office for the Southern
12 District of New York.

13 Q. What do you do there, what is your job title?

14 A. A paralegal specialist there.

15 THE COURT: Could you put the microphone closer to
16 you.

17 Q. What unit are you in?

18 A. Money laundering and asset forfeiture.

19 Q. In general, what are your duties and responsibilities as a
20 paralegal specialist in that unit?

21 A. I draft a lot of orders, for example, substitute asset
22 orders, final orders of forfeiture, subpoenas, nondisclosure
23 orders, and I also help in pretrial investigations and pretrial
24 duties.

25 Q. Have you done any work in connection with this

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Kronthal - Direct

1 investigation and case?

2 A. Yeah.

3 Q. Have you worked with the folks at this front table here?

4 A. Yes.

5 Q. And with me?

6 A. Yes.

7 Q. Have you been present in the courtroom for portions of the
8 testimony of this case?

9 A. Yes.

10 Q. Ms. Kronthal, how old are you?

11 A. I'm 23.

12 Q. Are you familiar with something called Instagram?

13 A. Yes.

14 Q. What is Instagram?

15 A. Instagram is a social media platform where you can post
16 pictures of your daily life and share them with friends and
17 followers.

18 Q. Do you just post pictures or can you post other things as
19 well?

20 A. You can post other things, like videos and comments.

21 Q. Do you have an Instagram account?

22 A. Yeah.

23 Q. If someone wants to open an Instagram account, what do they
24 have to do?

25 A. You can download the app on -- you go on your phone on the

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1 app store and you download the Instagram app, and you log in
2 and create a user name and a password, and then you can start
3 posting.

4 Q. Do you have to use a phone or can you also use a computer?

5 A. You can use a computer. You can use both.

6 Q. You said you create a user name and a password?

7 A. Yes.

8 Q. Is there a particular term for a user's user name?

9 A. Yes. It's called a handle.

10 Q. Does your handle have to be your real name or can it be
11 something different?

12 A. It can be anything you want.

13 Q. Is there a term for the information that's put on
14 Instagram?

15 A. Yeah. It's called posting, post a picture.

16 Q. Based on your use and review of Instagram, when are
17 Instagram posts generally made in relation to the picture being
18 taken?

19 A. It's usually instantaneous. So if you take a picture, then
20 you post it within a couple of hours or right then and there.

21 Q. Now, in connection with this case, have you been asked to
22 review the postings for two Instagram accounts?

23 A. Yes.

24 Q. What specifically were you asked to do with respect to
25 those accounts?

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1 A. I was asked to look at the pictures and then go on and
2 check to see if those pictures were on those two particular
3 accounts.

4 Q. Ms. Kronthal, could you please take a look at what I have
5 just handed you, specifically, Government Exhibits 713 through
6 716, 723 and 724.

7 A. OK.

8 Q. Do you recognize those?

9 A. Yeah.

10 Q. What are they?

11 A. They are screenshots of an Instagram post.

12 Q. Is that one of the posts that you were asked to review?

13 A. Yes.

14 THE COURT: What is a screenshot?

15 THE WITNESS: A screenshot is a picture taken on the
16 computer where you can -- you see the image on the computer and
17 there is like a snipper tool and you can screenshot the
18 picture.

19 Q. So it's an image of what was on the computer screen?

20 A. Yes.

21 Q. From what account or handle are the exhibits that we just
22 looked at?

23 A. This one is from superstar_al_k.

24 Q. Based on your review of that account, were you able to
25 determine the name of the user of that account?

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1 A. Yes.

2 Q. How were you able to do that?

3 A. If you go to their profile, it says their name under their
4 handle.

5 Q. What was the name listed under superstar_al_k?

6 A. Arash Katabchi.

7 MS. KEARNEY: The government offers Government Exhibit
8 713 through 716, 723 and 724.

9 MR. SCHMIDT: Your Honor, other than the previously
10 made objection, we have no further objection.

11 THE COURT: It's admitted. The sidebar is on the
12 record.

13 (Government's Exhibits 713, 714, 715, 716, 723 and 724
14 received in evidence)

15 Q. Ms. Kronthal, could you please look at Government Exhibits
16 725 through 730.

17 Do you recognize those exhibits?

18 A. Yeah.

19 Q. What are they?

20 A. They are also screenshots of an Instagram account, but this
21 time it's a different Instagram account.

22 Q. Is it one of the accounts you were asked to review?

23 A. Yes.

24 Q. What is the account or handle?

25 A. The handle for this one is Owimrin, but the O is spelled

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1 with a zero, so it's Owimrin.

2 Q. Based on your review of that account, were you able to
3 determine the name of the user of Owimrin?

4 A. Yes.

5 Q. How were you able to do that?

6 A. The same thing. You just click on Owimrin's handle and it
7 brings you to a profile and his name is underneath.

8 Q. What was that name?

9 A. Andrew Owimrin.

10 MS. KEARNEY: The government offers Government Exhibit
11 725 through 730.

12 MR. SCHMIDT: No objection.

13 THE COURT: Hearing no objection, admitted.

14 (Government's Exhibits 725, 726, 727, 728, 729 and 730
15 received in evidence)

16 MS. KEARNEY: Ms. Lee, can we please publish 713.

17 Could you zoom in as much as possible.

18 BY MS. KEARNEY:

19 Q. Ms. Kronthal, can you describe what this image is?

20 A. Sure. It's a post from super_al_k and there is a picture
21 and comments.

22 Q. Was the superstar_al_k account public or private?

23 A. It was public.

24 Q. What does it mean to have a public account?

25 A. It means that anyone can go on and type in your handle and

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1 then look at all of your posts.

2 Q. If you have a private account, what does that mean?

3 A. That means that you have to accept follower request. So if
4 someone wants to see your posts, they have to request to follow
5 you, and then you as that user have to accept them back and
6 then they can see it.

7 Q. Kind of like a friend request?

8 A. Yeah.

9 Q. Let's look at the bottom. It says "log in to like or
10 comment." What does it mean to like an Instagram post?

11 A. You see the heart right there. If you like it, then it
12 likes the picture. So it's kind of like in real life when you
13 like something, and you can do the same thing on a picture.

14 Q. What does it mean to comment on an Instagram post?

15 A. That means that you can add your comment. It looks like
16 there is one comment here. So you can just write something
17 about the post.

18 Q. You say it looks like there is one comment. Can you point
19 out where that is?

20 A. Yes. Right under the post -- on the right side it's the
21 last word.

22 Q. Can you read the comment?

23 A. The comment, sure. It says "I hashtag pay attention."

24 Q. Are you familiar with the term "hashtag"?

25 A. Yes.

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1 Q. What is a hashtag?

2 A. A hashtag is a way to categorize and describe the picture.

3 Q. What does a hashtag look like?

4 A. The pound sign.

5 Q. What is a hashtag used for?

6 A. It's a way to categorize a picture and describe what is
7 going on.

8 Q. So could you give us an example of a common hashtag?

9 A. So, for example, it's Halloween today, and so a lot of
10 people will post hashtag Halloween, and it's a way to see
11 that -- let's say you're in a costume and you hash tag
12 Halloween. It's a way to describe that you're not in a costume
13 for no reason, but you're celebrating the holiday Halloween.

14 Q. Are there some hash tags that are in general used, and by
15 that I mean that most Instagram users know what they mean?

16 A. Yes.

17 Q. What is an example of a hashtag that's in general use?

18 A. Hashtag TBT.

19 Q. What would that mean?

20 A. Throwback Thursday.

21 Q. What would you be trying to indicate with that?

22 A. That the picture that you're posting is of you when you
23 were younger or of an event when you were younger. So you're
24 throwing it back to a time that isn't the present.

25 Q. What about hashtag latergram?

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1 A. Yeah. That's a hashtag too.

2 Q. What does that indicate?

3 A. That's when you take a picture, but you're not posting it
4 right then, you might be posting it a couple of days later or a
5 week later, a couple of weeks later.

6 Q. You talked about hashtags that are in general use. Are
7 there some hashtags that are not in general use?

8 A. Yeah.

9 Q. What would be an example of when you use a hashtag that is
10 not understood by everyone?

11 A. If it's an inside joke with a friend.

12 Q. Let's look back at the full picture of 713.

13 THE COURT: Is there any use for a hashtag apart from
14 making whatever statement is being made by use of the hashtag?
15 Does that make sense?

16 THE WITNESS: Would someone use a hashtag if they
17 weren't --

18 THE COURT: No. For example, hashtag Halloween, you
19 said people will do that today.

20 THE WITNESS: Yeah.

21 THE COURT: Can I, for example, click on that hashtag
22 Halloween and see all of the public Instagram posts where
23 somebody has put hashtag Halloween?

24 THE WITNESS: Yes. Exactly.

25 THE COURT: So if you're making a political statement,

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1 you're pro the environment or anti the environment, or whatever
2 it might be, somebody could, if they see that hashtag, click on
3 it and see everybody who has written, again, either hashtag pro
4 environment or hashtag anti environment, is that the idea?

5 THE WITNESS: Yes.

6 THE COURT: Are there hashtags used that way?

7 THE WITNESS: Yes, there are. Sometimes, yeah.

8 THE COURT: What is the primary use of a hashtag, just
9 for people to look at it and to see Owimrin says I pay
10 attention?

11 THE WITNESS: For this, if you click on hashtag pay
12 attention, that will populate other people who have used
13 hashtag pay attention.

14 (Continued on next page)

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Kronthal - direct

1 Q. When you say "other people," you mean their profiles or the
2 post hash tag pay attention?

3 A. Post hash tag pay attention.

4 Q. You'll see a bunch of other pictures?

5 A. Yes.

6 THE COURT: Thank you.

7 Q. Looking at Government Exhibit 713, who is the user who
8 posted this photograph?

9 A. Superstar underscore A underscore K.

10 Q. Underneath that name, there is some text. Could you read
11 it.

12 A. Yeah. It says the killer 50 K a week is a light week for
13 him, exclamation points, hash tag pay attention, hash tag stay
14 focused, hash tag light work, hash tag look up.

15 Q. There is something with an "at" sign.

16 What does that mean?

17 A. He tagged another user.

18 Q. What does that do to tag another user?

19 A. That means it will tell that user, that it will give that
20 user a notification about this picture, that he was mentioned
21 in it or his handle is mentioned in the picture.

22 THE COURT: So the person whose handle is Drew
23 underscore steady 456 will automatically receive Government
24 Exhibit 713 in that person's Instagram account?

25 THE WITNESS: They'll get notified of that picture.

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Kronthal - direct

1 It might not be on Drew's Instagram, but he will be notified
2 that he was talked about in a different person's profile.

3 THE COURT: In this instance, do you know what that
4 notification would say?

5 THE WITNESS: I would say that Drew was tagged and
6 Superstar ALK's post of this photo so he can go click on it and
7 he can look at it right away.

8 THE COURT: It is not sent to the tagged; simply the
9 tagged person is notified that he was tagged in Superstar
10 underscore A L Superstar K's Instagram account. Is that right?

11 THE WITNESS: Yes.

12 THE COURT: Thank you.

13 BY MS. KEARNEY:

14 Q. And then you talked about the comments from zero Owimrin.
15 What is the comment?

16 A. I hash tag pay attention.

17 Q. Ms. Lee, could we see the whole thing again. Thank you.

18 THE COURT: Now, before you move on, how does one
19 decide what hash tags to put on a post?

20 MR. SCHMIDT: Objection, your Honor. I assume that
21 lots of people have different reasons.

22 THE COURT: Is that true, lots of people have
23 different reasons?

24 THE WITNESS: Yes.

25 THE COURT: Fair enough. But, for example, if

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Kronthal - direct

1 somebody writes hash tag stay focused and misspells "focused,"
2 I assume there is no reason -- it is unlikely that there are
3 other posts out there that say hash tag stay focused with a
4 misspelling of "focused," right?

5 THE WITNESS: It is possible that someone misspelled
6 it like that, and if you click on it, it will populate other
7 posts.

8 THE COURT: All right.

9 BY MS. KEARNEY:

10 Q. Let's take a look at the bottom on the right-hand side
11 underneath 24 likes. There is a date?

12 A. Yes.

13 Q. Ms. Lee, could you zoom in on that. Thank you. What is
14 that date?

15 A. May 26, 2015.

16 Q. What does that tell you about this post?

17 A. That means that it was posted on May 26, 2015.

18 Q. Ms. Lee, we look at Government Exhibit 714.

19 THE COURT: So on 713 it says 24 likes. 24 people
20 clicked on the heart when they got 713?

21 THE WITNESS: Yes, 24 people.

22 THE COURT: Is there some way for the Superstar
23 underscore A L underscore K to determine who those likers are?

24 THE WITNESS: Yeah. You click on the 24 likes, it
25 will show you what users like your picture.

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Kronthal - direct

1 THE COURT: That is available to Superstar underscore
2 A underscore K?

3 THE WITNESS: Yeah, but I can also Superstar ALK,
4 underscore the person. I can also look at who liked that
5 picture.

6 THE COURT: I can click on 24 likes and I will get a
7 list of the labels of those people of the likers?

8 THE WITNESS: Yeah.

9 THE COURT: Thank you.

10 BY MS. KEARNEY:

11 Q. Let's look at 714. Ms. Kronthal, who is the account who
12 made this post?

13 A. Under superstar ALK?

14 Q. Underneath that user name, it says the Westin Las Vegas,
15 Las Vegas hotel and Spa. What is that? Not what is the
16 Westin, but what does that indicate?

17 A. That indicates a location tag.

18 Q. How do you put a location tag on an Instagram post?

19 A. It is an option when you're posting the picture, you can
20 add a location. That means that you're there, that's where the
21 picture is taken.

22 THE COURT: Is that something you type in or does a
23 GPS automatically put that in if you want it to?

24 THE WITNESS: The GPS can put it in.

25 BY MS. KEARNEY:

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Kronthal - direct

1 Q. Ms. Lee, could you zoom out again and zoom in at the
2 bottom-right-hand side. What is the date on this post?

3 A. May 3, 2015.

4 Q. Look at Government Exhibit 715. Who is the user who made
5 this post?

6 A. Superstar ALK.

7 Q. What is the location tag?

8 A. The Encore, Las Vegas.

9 Q. What is the date of this posting?

10 A. May 2, 2015.

11 Q. Look at Government Exhibit 716. Who is the user who made
12 this post?

13 A. Superstar ALK.

14 Q. What is the date on this post?

15 A. April 17, 2015.

16 Q. Is there a location tag on this one?

17 A. No.

18 Q. Let's look at Government Exhibit 723. Who is the user who
19 made this post?

20 A. Superstar ALK.

21 Q. What is the location tag on it?

22 A. The Bank VIP at Bellagio.

23 Q. What is the date on this post?

24 A. April 23rd, 2016.

25 Q. Let's look at Government Exhibit 724. Who is the user who

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Kronthal - direct

1 made this post?

2 A. Superstar ALK.

3 Q. What is the date on this post?

4 A. May 17th, 2014.

5 Q. Now, could you flip through Government Exhibit 725 through
6 730 and remind us who is the user who posted these posts?

7 A. O Owimrin.

8 Q. Was the O Owimrin account public or private?

9 A. That was also public.

10 Q. Let's look at 725. Who is the user for this post?

11 A. O Owimrin.

12 Q. What date was it posted?

13 A. April 23rd, 2016.

14 Q. What is the location tag?

15 A. The Bank Nightclub at Bellagio.

16 Q. Let's look at 726. Who is the user who posted this?

17 A. O Owimrin.

18 Q. The location tag?

19 A. Lakeside at Wynn, Las Vegas.

20 Q. Ms. Lee, could you stay on that comment. In addition to
21 the text, there is a picture there. What are those?

22 A. Those are emojis.

23 Q. What are they used for?

24 A. To express your feelings.

25 Q. What is the date on this post?

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Kronthal - direct

1 A. April 22, 2016.

2 Q. Look at 727. Who is the user who made this post?

3 A. O Owimrin.

4 Q. What is the location tag?

5 A. The Encore in Las Vegas.

6 Q. What is the date?

7 A. The date is April 21, 2016.

8 Q. Look at Government Exhibit 728. Who is the user who made
9 this post?

10 A. O Owimrin.

11 Q. Is there a location tag?

12 A. No.

13 Q. Ms. Lee, could you look at the comments for a second. What
14 is that?

15 A. It is a device you can put your phone in and take a picture
16 of yourself and take picture of yourself and friends without
17 having someone take one of you.

18 Q. Here the message or the comment says hash tag selfie stick.
19 Is that an example of a hash tag?

20 A. Yeah.

21 Q. There is some smiley faces?

22 A. Yeah.

23 Q. What are those?

24 A. Emojis.

25 Q. What is the date on this post?

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Kronthal - direct

1 A. June 2, 2015.

2 Q. Look at Government Exhibit 729. Who is the user made this
3 post?

4 A. O Owimrin.

5 Q. What is the date on this post?

6 A. June 2, 2015.

7 Q. Look back at the comments on this one. Here in addition to
8 hash tag selfie stick, it says at Superstar ALK. Would you
9 describe to us what is happening there.

10 A. Sure. So O Owimrin, that user tagged Superstar, that other
11 user tagged Supperstar A underscore K, so that Superstar would
12 get a notification about this picture or this post.

13 Q. Did I ask you the date on this post?

14 A. It is June 2, 2015.

15 Q. Let's look at Government Exhibit 730. Who is the user that
16 made this post?

17 A. O Owimrin.

18 Q. What is the date on the post?

19 A. June 2, 2015.

20 Q. Just one moment.

21 (Off-the-record discussion)

22 MS. KEARNEY: No further questions.

23 THE COURT: Is there any cross-examination of this
24 witness?

25 MR. SCHMIDT: Yes, your Honor.

IAVJKET2

Kronthal - cross

1 CROSS EXAMINATION

2 BY MR. SCHMIDT:

3 Q. Good morning.

4 A. Good morning.

5 Q. Now, we looked at a number of photographs that Mr. Arash
6 Katabchi put in where he misspelled "focus" in in stay focused,
7 all right?

8 A. Yes.

9 Q. Now, you looked through more photographs than the ones that
10 were actually put into evidence. Is that correct?

11 A. Yes.

12 Q. In fact, there are Government Exhibits 717 through 722 that
13 were not entered into evidence, are also photographs put up by
14 Arash Katabchi. Is that correct? You just looked at them?

15 A. Yes.

16 Q. Those are all family-type photographs. Is that right?

17 A. I don't know who he is or his family is. I don't know the
18 people in the picture.

19 Q. 717 is a photograph of doctor --

20 MS. KEARNEY: Objection, your Honor.

21 THE COURT: Just a moment.

22 THE COURT: I don't see 717 up here, sir.

23 MR. SCHMIDT: It is not in evidence.

24 THE COURT: So what are you doing?

25 MR. SCHMIDT: Trying to complete the picture of --

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Kronthal - cross

1 THE COURT: Do you want to put it in evidence?

2 MR. SCHMIDT: I'll put that in evidence, yes. I will
3 put in 717 to 722 into evidence.

4 THE COURT: Any objection?

5 MS. KEARNEY: No objection.

6 THE COURT: 717 to 722 admitted.

7 (Government's Exhibits 717 through 722 received in
8 evidence)

9 MR. SCHMIDT: Now, can we just go through those, the
10 six of them every second or so.

11 (Pause)

12 BY MR. SCHMIDT:

13 Q. Now, on each of those photographs, Mr. Arash Katabchi also
14 does hash tag pay attention, hash tag stay focused and hash tag
15 light work. Is that right?

16 A. Yeah, in Government Exhibit 717.

17 Q. Actually, in 721 it is spelled correctly, isn't it?

18 THE COURT: Please put 721 up.

19 (Pause)

20 BY MR. SCHMIDT:

21 Q. Stay "focused" is actually spelled correctly?

22 A. Yes.

23 Q. But on the other ones, stay focused is spelled with two Cs?

24 A. Yes.

25 Q. So on all of -- now, the correct spelling of stay focused,

IAVJKET2

Kronthal - cross

1 did you check on how many, is it called users?

2 What is it actually called, people who would get
3 access to that hash tag?

4 A. Who could see it?

5 Q. Yes, the people who joined this --

6 A. Yeah, it would be users could see it.

7 Q. Stay focused has 2 million 800 users, don't they?

8 A. I don't know.

9 Q. You haven't checked?

10 A. No.

11 Q. Pay attention, you know, has almost 849,000, or have you
12 not checked?

13 A. I don't know.

14 Q. You haven't checked the amount of users on any of these
15 hash tags to see if it is a small group or it's a huge group of
16 people?

17 A. Who used that hash tag?

18 Q. Yes.

19 A. Yeah, I don't know who uses that.

20 Q. So if a hash tag is used by -- (Pause)

21 (Off-the-record discussion).

22 BY MR. SCHMIDT:

23 Q. You didn't check the results of any of the hash tags used
24 either by Arash Katabchi or Andrew Owimrin. Is that correct?

25 A. I didn't click on hash tag.

IAVJKET2

Kronthal - cross

1 Q. Before there was some question about using a hash tag could
2 be used as an inside joke, unquote. Do you remember saying
3 that?

4 A. Yeah.

5 Q. Now, if the hash tag has 2 million 800,000 members, it is a
6 pretty large inside joke. Wouldn't you say so?

7 MS. KEARNEY: Objection.

8 MR. SCHMIDT: I'll withdraw the question.

9 BY MR. SCHMIDT:

10 Q. It doesn't have to be an inside joke; it could just be
11 something that lots of people follow, right?

12 A. I don't know.

13 THE COURT: Now, look at 721. Do you see 721?

14 THE WITNESS: Yes.

15 THE COURT: It is a post by Superstar ALK, correct?

16 THE WITNESS: Yes.

17 THE COURT: So did he post four different posts using
18 that same picture? Is that what that indicates?

19 THE WITNESS: No. It is one picture. I think he only
20 posted it once, but he hash tagged different phrases.

21 THE COURT: No, not hash tag. There are "at," there
22 is the "at" sign?

23 THE WITNESS: I see. He commented on it four
24 different times, but he only posted it once.

25 THE COURT: Are the four different comments different

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Kronthal - cross

1 times or at the time of the posting?

2 THE WITNESS: It doesn't give me a time, so I don't
3 know when he commented on the post, but if he posted
4 instantaneously and people commented on it, then he can comment
5 back whenever he feels like it.

6 THE COURT: So at a later time?

7 THE WITNESS: Yes, or whenever, yeah, or that date or
8 later.

9 THE COURT: Okay. And this, you can't tell when those
10 comments were put on it from what you have here?

11 THE WITNESS: From what I have here, no.

12 THE COURT: Now, look at the second comment. I am
13 just trying to understand this. Superstar ALK, at meeeskiki.
14 That is another user?

15 THE WITNESS: Yes.

16 THE COURT: And by putting that on there, he is
17 sending the fact that meeeskiki was noted in 721. Is that
18 right?

19 THE WITNESS: Yes.

20 THE COURT: And then he says oh, hey, yeah, just got
21 here with my girl for a mini vaca. That one I know.

22 And so that's not only going to meeeskiki, right?
23 That is going to who?

24 THE WITNESS: That is for the public to see because
25 his account is public.

IAVJKET2

Kronthal - cross

1 THE COURT: So if I had an account, I could see this?

2 THE WITNESS: Yes.

3 THE COURT: If I were a user of Instagram, I could see
4 this?

5 THE WITNESS: Yes.

6 THE COURT: Okay. Thank you.

7 BY MR. SCHMIDT:

8 Q. Those are all, though, written by Superstar, right?

9 A. Yes.

10 Q. Do we not see the other comments, if there are any, would
11 they be there?

12 A. Not necessarily. Someone can delete their comment, but it
13 looks like these are only comments from Superstar.

14 Q. So like one his Honor was talking about meeeskiki, that
15 would be just sent to notification, would just be sent to
16 meeeskiki?

17 A. The notification would be.

18 Q. Right. As opposed to if you have a hash tag, everybody
19 under the hash tag would actually get it?

20 A. Well, no. So if you have a hash tag, people that use that
21 hash tag don't get a notification every time it is used. There
22 is no notification there.

23 Q. But they can access it?

24 A. If you click on it.

25 Q. This one, no one would -- it is not being sent to a group,

IAVJKET2

Kandar - direct

1 but it is open, so anybody could go and look at it if they
2 wanted to click on Superstar AK?

3 A. Yes.

4 MR. SCHMIDT: I have nothing further.

5 MR. PAUL: No questions, your Honor.

6 THE COURT: Any redirect?

7 MS. KEARNEY: No. Thank your Honor.

8 THE COURT: Thank you, Ms. Kronthal. You may step
9 down. Thank you for the education.

10 (Witness excused)

11 THE COURT: Next witness for the government, please.

12 MR. SOBELMAN: The government calls David Kandar.

13 DAVID KANDAR,

14 called as a witness by the Government,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SOBELMAN:

18 Q. Good morning, Mr. Kandar.

19 A. Good morning.

20 Q. Where do you live?

21 A. Bel Canto, Massachusetts.

22 Q. What is your educational background?

23 A. I have a masters degree in English.

24 Q. Are you employed?

25 A. Yes.

IAVJKET2

Kandar - direct

1 Q. Where do you work?

2 A. Avalon High School.

3 Q. Where is Avalon?

4 A. That is in Massachusetts, not too far from Springfield.

5 Q. What is your job at Avalon High School?

6 A. I teach high school English.

7 Q. I would like to ask you some questions about your mother.

8 What is her name?

9 A. Patricia A. Cabral.

10 Q. Who --

11 THE COURT: How do you spell her last name, sir?

12 THE WITNESS: C A B R A L.

13 THE COURT: Thank you.

14 BY MR. SOBELMAN:

15 Q. How old is she?

16 A. 86.

17 Q. Where does she live?

18 A. Waltham Crossing Nursing Home, Waltham, Massachusetts.

19 Q. Has your mother ever run her own business?

20 A. No.

21 Q. Has she ever expressed an interest you to you in starting
22 her own business?

23 A. No.

24 Q. Did there come a time when you learned she might have paid
25 money to telemarketing companies?

IAVJKET2

Kandar - direct

1 A. Yes.

2 Q. Approximately when did you learn about it?

3 A. November of 2015.

4 Q. Do you recall the names of any of those companies?

5 MR. SCHMIDT: Objection, your Honor.

6 A. I do.

7 THE COURT: Just a moment. When there is an
8 objection, if you would pause and I have to make a
9 determination about a legal issue.

10 THE WITNESS: Okay.

11 THE COURT: I will allow that. You may answer sir.

12 A. I do.

13 Q. What are the names you recall?

14 MR. SCHMIDT: Objection.

15 THE COURT: Basis?

16 MR. SCHMIDT: Hearsay.

17 THE COURT: I will allow that. You may answer.

18 A. Al Business Consultants, Morning Break, Vibrant Solutions,
19 something called CRF, and off the top of my head I can't
20 remember any more.

21 Q. I am going to ask you some questions about the first one
22 you mentioned, Al Business Consultants.

23 How did you first learn that your mother might have
24 paid money to Al?

25 A. There was a family friend visiting my mother when she was

IAVJKET2

Kandar - direct

1 still living at the house, and he overheard her arguing with
2 someone over the phone about money specifically, and he didn't
3 like what he heard, so he called me and told me I should call
4 my mother and try to find out what is going on.

5 Q. What, if anything, did you do next?

6 A. I called my mother and told her I would be down the next
7 day to talk to her about everything that was going on.

8 Q. What did you do next?

9 A. When I went down and talk to her, I interviewed her at
10 length about what it was she had done, who she was talking to
11 and what sort of paperwork she had.

12 Q. Why did you go visit her that day?

13 A. I was concerned that she was being taken advantage of and
14 paying monies to supposed businesses that didn't exist.

15 Q. What, if anything, did you do when you arrived to visit
16 her?

17 A. When I first got there, I just talked to her about what she
18 was doing and then we started looking at a lot of paperwork
19 that she had been given by A1 and we also looked at her credit
20 card statements.

21 Q. Ms. Lee, would you please display for the witness what is
22 marked for identification as Government Exhibit 120.

23 Mr. Kandar, do you recognize this?

24 A. Yes.

25 Q. What is it?

IAVJKET2

Kandar - direct

1 A. It is a Product and Services Agreement with A1 Business
2 Consultants. I remember looking at this with my mother.

3 Q. Is this one of the documents you received from your mother
4 that day?

5 A. Yes.

6 Q. Is it a fair and accurate copy of that document?

7 A. Yes.

8 MR. SOBELMAN: The government offers Government
9 Exhibit 120.

10 MR. SCHMIDT: No objection.

11 THE COURT: Admitted without objection.

12 (Government's Exhibit 120 received in evidence)

13 BY MR. SOBELMAN:

14 Q. Ms. Lee, could you please display it for the jury.

15 Mr. Kandar, can you read the title of this document?

16 A. "Product and Services Agreement with A1 Business
17 Consultants, LLC."

18 Q. Whose name is listed in the first paragraph?

19 A. My mother's, Patricia Cabral.

20 Q. What is the date on this document?

21 A. The 12th day of October, 2015.

22 Q. What is the cost listed under products/services?

23 A. \$9,995.00.

24 Q. Could you please read the services provided under services
25 provided?

IAVJKET2

Kandar - direct

1 A. Business plan, Corp. Credit, and bookkeeping.

2 Q. Do you know what "business plan" means in this context?

3 A. No.

4 Q. Do you know what "Corp. Credit" means in this context?

5 A. No.

6 Q. As far as you know, was your mother in need of bookkeeping
7 services at that time?

8 MR. SCHMIDT: Objection.

9 THE COURT: Sustained.

10 BY MR. SOBELMAN:

11 Q. Let's take a look at Page 3. Mr. Kandar, do you recognize
12 the handwriting on this page?

13 A. Yes.

14 Q. Whose handwriting is it?

15 A. It is my mother's.

16 Q. Ms. Lee, can you please show the witness what is marked for
17 identification as Government Exhibit 121.

18 Ms. Lee, please show the witness -- sorry.

19 Mr. Kandar, do you recognize this?

20 A. Yes.

21 Q. What is it?

22 A. It is a Hanscom Federal Credit Union Visa credit card
23 statement.

24 Q. Is this another one of the documents your mother provided
25 to you at the time you went to visit her?

IAVJKET2

Kandar - direct

1 A. Yes.

2 Q. Is it a fair and accurate copy of that document as it was
3 provided to you by your mother?

4 A. Yes.

5 MR. SOBELMAN: Your Honor, the government offers
6 Government Exhibit 121?

7 MR. SCHMIDT: No objection.

8 THE COURT: Admitted.

9 (Government's Exhibit 121 received in evidence)

10 MR. SOBELMAN: Ms. Lee, please display it for the
11 jury.

12 BY MR. SOBELMAN:

13 Q. Mr. Kandar, please read where this is from in the
14 upper-left-hand corner?

15 A. Hanscom Federal Credit Union.

16 Q. What type of credit card is this for.

17 A. Visa platinum credit card.

18 Q. Whose name appears in the address field?

19 A. Patricia A. Cabral, my mother.

20 Q. Whose handwriting do we see on this document?

21 A. My mother's.

22 Q. What is the date in the upper-right-hand corner?

23 A. The --

24 Q. The statement date?

25 A. 10-31-15.

IAVJKET2

Kandar - direct

1 Q. What is the credit limit listed underneath that?

2 A. \$14,500.

3 Q. What is the unused credit available listed beneath that?

4 A. Zero.

5 Q. In the top middle of the page, how much is the amount over
6 credit limit?

7 A. \$7,552.43.

8 Q. Looking to a list of transactions, if you could focus on
9 the one that lists A1 Business Consultants.

10 Can you please read us the charge date, postdate and
11 the amount?

12 A. The charge date is 10-14, postdate is 10-16, and the amount
13 is \$9,995.00.

14 Q. Is that the same amount listed on the contract we looked
15 at?

16 A. Yes.

17 Q. What, if anything, did you do after receiving the contract
18 and this credit card Bill?

19 A. I talked to my mother about them. I asked her for any
20 information she had on these supposed businesses, and I started
21 trying to contact them about getting a refund.

22 THE COURT: Who is "them"?

23 THE WITNESS: A1 Business Consultants in this instance
24 right here.

25 BY MR. SOBELMAN:

IAVJKET2

Kandar - direct

1 Q. Did you contact the other companies that have circled
2 amounts on the bill as well?

3 A. Yes.

4 Q. I am going to ask you just about A1 for the moment. Who,
5 if anyone, did you speak with at A1?

6 A. The two names that I recall are Connor Wasson, as I wrote
7 it down and Zack Peterson.

8 Q. Do you know whether those were their real names?

9 A. I have no idea.

10 Q. Approximately how many times did you speak with Connor
11 Wasson?

12 A. I believe around three times.

13 Q. What do you recall from your conversations with him?

14 A. He acted very sympathetic towards the information I was
15 telling him about my mother's physical and mental condition,
16 and he suggested ultimately that I talked to Zack Peterson.

17 Q. Did there come a time when you did speak with Zack
18 Peterson?

19 A. Yes.

20 THE COURT: What was her physical and mental condition
21 at that time, which was October 2015. Is that right? Was that
22 in October 2015?

23 THE WITNESS: Yeah, at that time my mother was using a
24 walker. She had seven back operations. She was frequently
25 dehydrated. She has been in and out of the emergency room a

IAVJKET2

Kandar - direct

1 number of times over the last seven years, truthfully, and she
2 is now in a nursing home.

3 THE COURT: What was her mental condition in October
4 of 2015?

5 THE WITNESS: The dehydration that she frequently
6 endured because she is also incontinent, and so she would be
7 afraid to drink too much, made her mind cloudy, made her not
8 understand things, and she frequently would get confused.

9 THE COURT: Next question.

10 BY MR. SOBELMAN:

11 Q. Let's take a look at Government Exhibit 512 in evidence.
12 If you could zoom in. Is that possible? We can go to the
13 bottom email on the page of the three. Mr. Kandar, have you
14 ever seen this before?

15 A. No.

16 Q. Did I show this to you before right now?

17 A. No.

18 Q. Can you please read the date on the top of the email.

19 A. Friday, December 4th, 2015, at 11:15 am.

20 Q. What is the email address listed next to it?

21 A. Steve at A1 Business Consultants dot com.

22 Q. Is that an email address you're familiar with?

23 A. No.

24 Q. Can you please read the email.

25 A. High, Brian. I hope you are doing well. Can you please

IAVJKET2

Kandar - direct

1 send us the POF for Patricia Cabral today. Thank you and have
2 an amazing day. Best of regards, Steve K.

3 Q. Do you know what POF means in this context?

4 A. No.

5 Q. Ms. Lee, can you please look at the email right above that
6 in the middle of the page. Mr. Kandar, is there a date and
7 time on this e-mail?

8 A. On Friday, December 4th, 2015, at 12:39 pm.

9 Q. What email address is it from?

10 A. Brian at your business dot training.

11 Q. Is that an email address you're familiar with?

12 A. No.

13 Q. Would you please read the email.

14 A. I can only assume by POF you're referring to the safe word.
15 Patricia's safe word is Danny.

16 Q. Ms. lee, please go to the top email on the page.

17 Mr. Kandar, what is the date on this email?

18 A. Friday, 4 December 2015.

19 Q. What is the subject line?

20 A. POF request for new CB.

21 Q. Do you know what CB means in this context?

22 A. No.

23 Q. What is the email address it is from?

24 A. Brian at your business dot training.

25 Q. Who is it to?

IAVJKET2

Kandar - direct

1 A. Steve at A1 Business Consultants dot com.

2 Q. What email addresses are on the CC?

3 A. Katabchi dot Arash at Gmail dot com, Arash at A1 Business
4 Consultants dot com.

5 Q. Are you familiar with these names or email addresses?

6 A. No.

7 Q. Would you please read the email.

8 A. Just read the notes on client and I wanted to give you a
9 heads-up. She has cancel pending. Her son is claiming she has
10 dementia and is in the process of getting power of attorney so
11 she can cancel.

12 Q. Did there come a time when you spoke to Zack Peterson?

13 A. Yes.

14 Q. Approximately how many times did you speak to Zack
15 Peterson?

16 A. I don't remember exactly, probably around a dozen or so.

17 Q. When you first spoke with Mr. Peterson, what, if anything,
18 did you tell him?

19 A. I explained to him my mother's physical condition and
20 mental condition, and he acted very concerned.

21 Q. What, if anything, did you ask Mr. Peterson for at that
22 time?

23 A. I asked her for a refund based on my mother's physical and
24 mental condition.

25 Q. How did Mr. Peterson respond to that request?

IAVJKET2

Kandar - direct

1 A. He did not want to give a refund. He told me that she -- I
2 can't remember the exact words, but he showed me her driver's
3 license and said she looked fine, and he was not going to rule
4 right then and there whether she was eligible to create her own
5 business.

6 Q. You said he showed you her driver's license?

7 A. Yes, he did.

8 Q. Did you speak with him over the phone or was it in person?

9 A. I spoke to him over the phone, and he showed me her
10 driver's license over the email.

11 Q. When you say "her driver's license," you mean a photograph
12 of it?

13 A. Photograph of her driver's license, yes.

14 Q. What did he say about that photograph?

15 MR. SCHMIDT: Asked and answered, your Honor.

16 THE COURT: I'll allow it. Apart from she looked
17 fine, did he say anything else?

18 THE WITNESS: About the photograph?

19 THE COURT: Yes.

20 THE WITNESS: No.

21 THE COURT: Next question.

22 BY MR. SOBELMAN:

23 Q. Did there come a time when you contacted Hanscom Federal
24 Credit Union about Al's charge your mother's credit card?

25 A. Yes.

IAVJKET2

Kandar - direct

1 Q. Why did you contact them?

2 A. I contacted them because I was afraid she was being taken
3 advantage of.

4 Q. What, if anything, happened during your conversations with
5 them?

6 MR. SCHMIDT: Objection, your Honor. I think the
7 attempt to -- hearsay. I object to some other things.

8 THE COURT: Just a moment. Sidebar quickly.

9 MR. SOBELMAN: I can ask it in a different way. I am
10 not looking to elicit hearsay.

11 BY MR. SOBELMAN:

12 Q. What, if anything, did you ask them to do during your
13 conversations with them?.

14 A. I asked them for advice regarding what had happened, and
15 they suggested --

16 MR. SCHMIDT: Objection, your Honor.

17 THE COURT: The question is what did you say to them.

18 THE WITNESS: What did I say to them? I asked them
19 for advice.

20 BY MR. SOBELMAN:

21 Q. What, if any, steps did you take with them with respect to
22 those charges?

23 A. I asked them to charge back the money and dispute it that
24 way.

25 Q. Why?

IAVJKET2

Kandar - direct

1 A. Because I felt she was being subjected to fraud.

2 Q. After contacting Hanscom, did you speak with Mr. Peterson
3 again?

4 A. Yes.

5 Q. What, if anything, did Mr. Peterson say about a refund at
6 that time?

7 A. He talked about specifically he had to talk to their people
8 there, their attorneys and others who were decision-makers
9 about the possibility of a refund. He eventually told me that
10 he would give us a \$3,000 refund if we pulled back the
11 Charge-backs with Hanscom.

12 Q. How did you respond to Mr. Peterson's suggestion?

13 A. I told him we wanted a full refund.

14 Q. Why?

15 MR. SCHMIDT: Objection, your Honor.

16 THE COURT: No. I will allow that. Why did you
17 request a full refund?

18 THE WITNESS: Because my mother deserved a full refund
19 based on the fact that she didn't really know what she was
20 doing.

21 BY MR. SOBELMAN:

22 Q. Did you talk to Mr. Peterson again after that?

23 A. Yes.

24 Q. What, if any, suggestions did me make at that time
25 regarding a refund?

IAVJKET2

Kandar - direct

1 A. The last time that I spoke with him, he suggested that my
2 mother declare bankruptcy and they would give us a \$3,000
3 refund still and we would both win.

4 Q. How did you respond to Mr. Peterson's suggestion?

5 A. I didn't know what to say.

6 Q. Why?

7 A. Because I felt I was being asked to commit fraud.

8 Q. In total, approximately how much did your mother pay to A1
9 and the other telemarketing companies?

10 A. You see, this is the frustrating thing because I don't know
11 that I can come up with an exact figure. I believe it is
12 around \$30,000.

13 Q. Did she make that money back --

14 THE COURT: Did she receive that money back?

15 THE WITNESS: Not all of it.

16 Q. The question specifically is did she make any of that money
17 back in profits from the --

18 THE COURT: I am sorry. I didn't realize.

19 MR. SOBELMAN: That is okay, your Honor.

20 THE COURT: Yes, it is.

21 THE WITNESS: Would you mind saying that?

22 BY MR. SOBELMAN:

23 Q. Let me rephrase.

24 Did your mother make any of the money that she spent,
25 the approximately \$30,000 back in profits or revenue from any

IAVJKET2

Kandar - direct

1 of the supposed businesses that she invested in?

2 A. No.

3 Q. Did she make any money?

4 A. No.

5 Q. Ultimately, did Al give you or her any of the money back
6 that she paid to them?

7 A. No.

8 Q. Did Hanscom make your mother pay the charge to Al?

9 A. No.

10 Q. Throughout your communications with Zack Peterson, did he
11 read you any voice-mails?

12 A. Yes.

13 Q. Mr. Kandar, I am going to hand you what are marked as
14 Government Exhibits 122, 123, 124 and 125. Do you recognize
15 these?

16 A. Yes.

17 Q. What are they?

18 A. They're recordings of the voice-mail messages left on my
19 phone.

20 Q. Did you have an opportunity to listen to the audio files on
21 these four desks in preparation for your testimony today?

22 A. Yes.

23 Q. How do you know that you reviewed these particular discs?

24 A. My initials are on the disks.

25 Q. Who wrote those initials?

IAVJKET2

Kandar - direct

1 A. Me.

2 Q. Are the audio files on these disks fair and accurate copies
3 of voice mails you received from Zack Peterson?

4 A. Yes.

5 MR. SOBELMAN: Your Honor, the government offers
6 Government Exhibit 122, which was previously offered subject to
7 connection, and Government Exhibits 123, 124 and 125.

8 MR. SCHMIDT: No objection.

9 MR. PAUL: No objection.

10 THE COURT: Admitted without objection.

11 (Government's Exhibits 122, 123, 124 and 125 received
12 in evidence)

13 MR. SOBELMAN: Can you please hand out copies of
14 122-T, which was previously offered.

15 THE COURT: Is that the only T you're offering at this
16 point?

17 MR. SOBELMAN: There are going to be three others in a
18 moment. This was was previously offered. There are three
19 Mr. Kandar viewed we will offer in a few minutes.

20 THE COURT: Was it admitted as an aid already?

21 MR. SOBELMAN: 122-T was admitted as an aid previously
22 in this trial.

23 THE COURT: Fine.

24 THE COURT: You understand, ladies and gentlemen of
25 the jury, right, this is simply to assist you in listening to

IAVJKET2

Kandar - direct

1 the audio file. The transcripts in your hands are not evidence
2 themselves.

3 MR. SOBELMAN: Ms. Lee, please display what is already
4 offered as 122-T.

5 BY MR. SOBELMAN:

6 Q. Mr. Kandar, on what date did you receive the the voice-mail
7 transcribed here?

8 A. November 3rd, 2015.

9 MR. SOBELMAN: Ms. Lee, can you please play the first
10 minute and two seconds of Government Exhibit 122.

11 (Audio played)

12 BY MR. SOBELMAN:

13 Q. What was your understanding of the message left on this
14 voice-mail?

15 A. My understanding was that he was going to work on trying to
16 get us at least a partial refund.

17 Q. Did that come to fruition?

18 A. No.

19 MR. SOBELMAN: Ms. Lee, please play the remainder of
20 Government Exhibit 122.

21 (Audio played)

22 BY MR. SOBELMAN:

23 Q. Mr. Kandar, what is your understanding of whether that
24 portion of the voice-mail was intentionally left for you?

25 A. It was not intentionally left, I believe.

IAVJKET2

Kandar - direct

1 Q. Are you able to identify all of the voices on that
2 recording?

3 A. No.

4 Q. Ms. Lee, can you please display -- let me ask this first.

5 In preparation for your testimony today, did you have
6 an opportunity to review draft transcripts of recordings that
7 are in evidence as 123, 124 and 125?

8 A. Yes.

9 Q. Ms. Lee, just display the first pages of those transcripts
10 for Mr. Kandar, just for Mr. Kandar. Those were marked as
11 Government Exhibits 123-T, 124-T and 125-T?

12 A. There is nothing there yet.

13 Q. Perhaps you can display the substantive pages in the
14 transcripts for the witness.

15 Can you see that on your screen?

16 A. Yes.

17 Q. Are these the three transcripts you reviewed?

18 A. Yes.

19 Q. Did you have the opportunity to compare the accuracy of
20 these transcripts to the audio recordings that they correspond
21 to?

22 A. Yes.

23 Q. Were they accurate?

24 A. Yes.

25 MR. SOBELMAN: The government offers Government

IAVJKET2

Kandar - direct

1 Exhibits 123-T, 124-T and 125-T as aids to the jury.

2 THE COURT: Hearing no objection, I am going to admit
3 them for that purpose as aids to you. Again what you hear is
4 the evidence, not what is on the transcript.

5 (Government's Exhibits 123-T, 124-T and 125-T received
6 in evidence)

7 MR. SOBELMAN: May I have permission to distribute
8 copies to the jury?

9 THE COURT: Yes.

10 MR. SOBELMAN: Ms. Lee, please display Government
11 Exhibit 123-T.

12 Q. On what date did you receive the voice-mail that is
13 transcribed here?

14 A. November 11th, 2015.

15 Q. Who is it left by?

16 A. Zack Peterson.

17 Q. Ms. Lee, please --

18 THE COURT: Approximately how long after the
19 conversation that was just played was this, the conversation
20 reflected in 123? That is not --

21 MR. SOBELMAN: Perhaps I can help answer the question,
22 your Honor, by putting up the exhibit.

23 THE COURT: Can you answer my question? How long
24 after the tape that we just heard was the tape in this
25 transcript, if you know?

IAVJKET2

Kandar - direct

1 THE WITNESS: You mean how many --

2 THE COURT: Months, years, days?

3 THE WITNESS: I never arranged any of the voice-mail
4 messages I got in 2015. It wasn't until, I don't know,
5 September, until this all started.

6 THE COURT: How soon after the first conversation did
7 the second conversation take place?

8 THE WITNESS: You mean on my voice-mail messages or on
9 the conversations I actually had?

10 THE COURT: The conversations?

11 THE WITNESS: I don't remember.

12 THE COURT: Fine. Go ahead, sir.

13 MR. SOBELMAN: Thank your Honor.

14 BY MR. SOBELMAN:

15 Q. Just to make it clear, Ms. Lee, put up the first page of
16 the transcript 122-T. Mr. Kandar, this is from the recording
17 we just listened to. What was the date on this voice-mail?

18 A. November 3rd, 2015.

19 Q. Ms. Lee, please put up the first page of 123-T. What is
20 the date on this voice-mail?

21 A. November 11th, 2015.

22 Q. Approximately how long between these voice mails was there?

23 A. Eight days.

24 MR. SOBELMAN: Ms. Lee, please play Government Exhibit
25 123.

IAVJKET2

Kandar - direct

1 (Audio played)

2 BY MR. SOBELMAN:

3 Q. Mr. Kandar, what was your reaction to receiving this
4 voice-mail?

5 A. I was incensed.

6 || Q. Why?

7 A. Because I had explained how infirm my mother was and how
8 physically and mentally debilitated she was, and the idea of
9 her actually doing and starting some kind of business at that
10 point was infuriating to me.

11 Q. Ms. Lee, can you please display Government Exhibit 124-T.

12 || What was the date on this voice-mail?

13 || A. December 8th, 2015.

14 Q. Who was it left by?

15 A. Zack Peterson.

16 MR. SOBELMAN: Ms. Lee, please play Government Exhibit
17 124. Thank you.

18 || (Audio played)

19 BY MR. SOBELMAN:

20 Q. Did you ever receive a check from Zack Peterson?

21 A. No.

Q. Did you ever receive a check from A1?

23 A. No.

24 Q. Did your mother ever receive a check like that?

25 A. No.

IAVJKET2

Kandar - cross

1 Q. Ms. Lee, please display Government Exhibit 125-T. On what
2 date did you receive the voice mails transcribed here?

3 A. December 10th, 2015.

4 Q. Who was it left by?

5 A. Zack Peterson.

6 MR. SOBELMAN: Ms. Lee, please play Government Exhibit
7 125.

8 (Audio played)

9 BY MR. SOBELMAN:

10 Q. Did you or your mother receive any legal paperwork from
11 Mr. Peterson or A1?

12 A. No.

13 Q. What was your reaction to that?

14 A. I was angry, but I also wanted to see these people in court
15 and hire my own lawyer to discuss any potential lawsuit over
16 the \$10,000.00.

17 MR. SOBELMAN: No further questions.

18 THE COURT: Any cross?

19 (Off-the-record discussion)

20 CROSS EXAMINATION

21 BY MR. SCHMIDT:

22 Q. Mr. Kandar, I understand that you're very very upset, so
23 I'll try to be as brief as possible.

24 Now, you collected all the paperwork related to the
25 charges against your mother's credit cards, right?

IAVJKET2

Kandar - cross

1 A. I looked at her credit card statements and other things
2 that were sent to her by A1, yes.

3 Q. You told us about A1.

4 Did you collect the other papers from the other
5 companies that your mother paid?

6 A. There were no other papers from those companies, just my
7 mother's notes that she had from those companies.

8 Q. Well, there was credit card charges in April of 2015
9 against your mother's credit card. Isn't that right?

10 A. I don't remember that.

11 Q. You don't remember challenging the charges by Net Zero?

12 A. No.

13 THE COURT: Mr. Schmidt, how long do you think your
14 cross is? I don't want to rush you. It is 11:30, and I
15 haven't given the jury its mid-morning break.

16 MR. SCHMIDT: Your Honor, probably about 15 minutes.

17 THE COURT: Let's take a 15-minute break, ladies and
18 gentlemen. That was not to rush you, sir.

19 MR. SCHMIDT: I understand.

20 (Jury excused)

21 THE COURT: You may step down, sir. Because you're on
22 cross-examination, you should not talk with any of the
23 government lawyers. You can talk with the agent who you have
24 been dealing with in terms of where to go and whatever, but
25 don't talk with the government lawyers. Thank you. We're

IAVJKET2

Kandar - cross

1 going to take a rest break.

2 (Recess)

3 (Continued on next page)

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IAV8KET3

1 (Jury not present)

2 THE COURT: I am told the lawyers have issues.

3 MS. KEARNEY: Yes, your Honor. We wanted to visit the
4 issue of Ms. Thompson's notes, Government Exhibit 165. We
5 realized in reviewing the transcript yesterday that there was
6 no ruling on the exception under 801(d)(1)(B)(ii), which is
7 that --

8 THE COURT: Just a moment.

9 801?

10 MS. KEARNEY: (d)(1)(B)(ii).

11 And, also, under Rule 106, and I can explain further.

12 THE COURT: Yes. Go ahead.

13 MS. KEARNEY: Essentially, what has happened here is
14 on cross Mr. Hassen had Ms. Thompson read selected excerpts of
15 her notes. And what that does is it creates an incredibly
16 confusing picture of what those notes are.

17 So, for example, if you go through his
18 cross-examination, she reads from page 6, then she reads from
19 page 9, then she reads from page 7.

20 The thrust of that cross-examination, by having her
21 read statements made by people who are not defendants here, is
22 that she is somehow confusing statements that unknown or
23 non-defendant folks made to her with statements that Jonathan
24 Stewart made to her. I think that creates an incredibly
25 confusing picture for the jury, and I think that the implied

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1 charge of Mr. Hassen's cross-examination is that she is somehow
2 confused and therefore lacks credibility.

3 Now, in permitting her to read the selected portions
4 of those notes, it creates a misleading picture for the jury of
5 what exactly her notes were. So basically selected excerpts of
6 notes through her reading them have been introduced to the
7 jury, and so under 106 we would like to submit the entirety of
8 her notes.

9 THE COURT: OK. Thank you.

10 Mr. Hassen or Mr. Schmidt.

11 MR. SCHMIDT: Your Honor, as the Court indicated --

12 THE COURT: I take it you are going to argue that she
13 was confused and is mixing up people.

14 MR. SCHMIDT: Well --

15 THE COURT: No, you're not?

16 MR. SCHMIDT: Your Honor, we are going to make an
17 argument of some nature relating to that. However, it is --

18 THE COURT: I am not sure what that means.

19 MR. SCHMIDT: I want to explain. The witness's
20 testimony on direct was mostly her recollection based on her
21 preparation to testify, which included reviewing her notes.
22 That's reasonable and logical.

23 Because we did not prepare her of certain other time
24 frames or things that happened, we were asking her questions,
25 and because she didn't review everything that we were going to

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1 ask her, we had to go back to her notes as to the questions
2 that we were asking. And because her memory was fairly normal
3 of a person in trying to break everything down, she required
4 looking at her notes. Sometimes it refreshed her recollection,
5 sometimes it didn't, and when it didn't, we brought it in as a
6 prior recorded statement.

7 So the government then had the right, as your Honor
8 indicated, they could go back to specific selected ones that
9 they wanted to. If she didn't remember it, she would be able
10 to review the notes. And if that didn't cause her to refresh
11 her recollection, then she would be able to read from her notes
12 as a prior recorded statement. They chose to do it at one
13 paragraph and not to do it for others that they could have done
14 for redirect.

15 It's not a substitute to put everything in en masse
16 for their failure to take advantage of their ability to do it
17 the right way on redirect examination.

18 THE COURT: What are you going to argue based on her
19 notes?

20 MR. SCHMIDT: I am not going to argue based on her
21 notes. I am going to argue based on her testimony which
22 include the notes.

23 THE COURT: It's a better way to say it. What is your
24 argument going to be?

25 MR. SCHMIDT: She is certainly mixing up some things

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1 with others and some things she is absolutely right on.

2 MS. KEARNEY: I think that's the point here, your
3 Honor.

4 THE COURT: Yes. That's exactly the government's
5 argument.

6 MR. SCHMIDT: I understand, your Honor. The remedy
7 was for them to do this on cross-examination and not just to
8 put all of her notes en masse in evidence.

9 THE COURT: Ms. Kearney, the 801(d) -- I'm sorry.
10 801(d)(1)(B)(ii) says "is offered to rehabilitate the
11 declarant's credibility as a witness when attacked on another
12 ground." What is the "when attacked on another ground"?

13 MS. KEARNEY: Lack of memory, your Honor. Confusion.
14 It's precisely what Mr. Schmidt is laying out here, that their
15 intention is to argue that certain representations that she
16 testified were made to her were not in fact made by Jonathan
17 Stewart, but were made by the other people, and then she
18 verbatim read selected pages of those notes.

19 So to have the jury have a oral recitation of random
20 out-of-order pages of Ms. Thompson's notes is really not the
21 best way to introduce --

22 THE COURT: You were able -- go ahead.

23 MS. KEARNEY: Mr. Schmidt also said that the way she
24 testified was based on her preparation with the government, and
25 the fact that she had reviewed --

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1 THE COURT: I don't care about that.

2 Go ahead.

3 MS. KEARNEY: The point there, your Honor, is that
4 under (i) of that section, that charge is that because she has
5 developed some motive to overemphasize or underemphasize.

6 THE COURT: The jury will get a charge that it will be
7 unusual for the witnesses not to have talked to the lawyers
8 beforehand.

9 MS. KEARNEY: The larger point I am making, your
10 Honor, is this is 37 pages of documents. They are in
11 notebooks. They are in chronological order. Unlike myself and
12 some other witnesses we have had, her handwriting is legible.
13 So I don't think it will cause any confusion to the jury.
14 These pages are in order and it's very clear what they are.
15 Indeed, it will remedy the confusion created by having her read
16 out-of-order excerpts of certain pages jumping back and forth.

17 THE COURT: Mr. Paul, you said you may call her.

18 MR. PAUL: Sorry, Judge?

19 THE COURT: Didn't you say you may call her?

20 MR. PAUL: Are you talking about Ms. Thompson?

21 THE COURT: Yes.

22 MR. PAUL: No.

23 MR. SCHMIDT: We withdraw our objection.

24 THE COURT: All right.

25 MS. KEARNEY: Problem solved.

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1 THE COURT: What is the exhibit number?

2 MS. KEARNEY: It will pages 1 through 37 of Government
3 Exhibit 165. We will create a 165A.

4 MR. SCHMIDT: If I may, I may want to add from I think
5 167, if I could take a look at that.

6 THE COURT: Let's do that -- we are going to bring the
7 jury back.

8 MS. KEARNEY: Your Honor, just to flag, 167 has not
9 been authenticated.

10 THE COURT: Take the time to authenticate it.

11 MS. KEARNEY: It's her notes.

12 THE COURT: It didn't come from the government
13 production?

14 MS. KEARNEY: It's in the government production, yes.

15 THE COURT: Isn't that the authentication issue?

16 MS. KEARNEY: Ms. Thompson testified on both direct --

17 THE COURT: What is 167?

18 MS. KEARNEY: 167 is a different notebook.

19 THE COURT: Mr. Schmidt, did you hear that?

20 MR. SCHMIDT: I heard that, your Honor.

21 THE COURT: We don't have the witness now. So let's
22 get this jury in.

23 Mr. Schmidt, you will do your cross. How long do you
24 think it is now?

25 MR. SCHMIDT: 15, 20 minutes.

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1 THE COURT: Mr. Paul, are you going to have any?

2 MR. PAUL: No, your Honor.

3 THE COURT: Then, I take it, the government is going
4 to rest, subject to the issue of Thompson's exhibits.

5 MS. FLETCHER: Yes, your Honor, and a handful of other
6 documents we intend to offer without a witness.

7 THE COURT: And then you will rest.

8 MS. FLETCHER: Yes.

9 THE COURT: Then I think I will let the jury go, but
10 with this crew -- that is, all the lawyers -- let's button up
11 the 165/167 issue before I adjourn them for the day.

12 Mr. Schmidt.

13 MR. SCHMIDT: We found actually on the transcript of
14 doing that on at least one of the pages of Exhibit 167.

15 THE COURT: Speak into the microphone or at least
16 louder.

17 MR. SCHMIDT: We found where we did lay the foundation
18 for at least one of the pages in 167.

19 THE COURT: Share that with the government.

20 Let's bring in jury in.

21 (Continued on next page)

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1 THE COURT: Jury entering.

2 (Jury present)

3 DAVID KANDAR, resumed.

4 THE COURT: Please be seated in the courtroom.

5 I remind you, sir, you remain under oath.

6 You may continue and conclude your cross-examination,
7 Mr. Schmidt.

8 BY MR. SCHMIDT:

9 Q. Mr. Kandar, you provided the government with a number of
10 documents, is that correct?

11 A. Yes.

12 Q. One of the documents was admitted as Government Exhibit
13 121, is that correct?

14 MR. SCHMIDT: Can we put up 121?

15 A. Yes.

16 Q. In that document, which is a credit card statement, it
17 includes a payment to A1 Business Consultants, is that right?

18 A. Yes.

19 Q. It also includes a payment to a company named Morning
20 Break, is that right?

21 A. Yes.

22 Q. And a company named Great Western Tax, is that correct?

23 A. Yes.

24 Q. And a company named CRF Enterprises, is that correct?

25 A. Yes.

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1 Q. These are other companies that you learned that your mother
2 had dealings with, is that right?

3 A. Yes.

4 Q. And you contacted them as well?

5 A. I did.

6 Q. Now, another document that you provided the government with
7 is 3508-3, page 12.

8 Can you see that?

9 A. Yes.

10 Q. Is that a document that you provided to the government?

11 A. Yes.

12 Q. Is that a document related to the moneys that your mother
13 paid out to these entities?

14 A. Yes.

15 MR. SCHMIDT: I offer that into evidence, your Honor.

16 MR. SOBELMAN: As long as the offer is just page 12,
17 there is no objection.

18 MR. SCHMIDT: Right now it's just page 12.

19 THE COURT: Is that your offer?

20 MR. SCHMIDT: Yes. Page 12 is what I am offering,
21 yes.

22 THE COURT: Admitted without objection.

23 (Government's Exhibit 3508-3, page 12 received in
24 evidence)

25 THE COURT: Continue.

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1 MR. SCHMIDT: I am trying to publish it, your Honor.

2 THE COURT: Can the jury see it?

3 We will get it up.

4 THE JURY: It's up.

5 BY MR. SCHMIDT:

6 Q. In that bill there is a payment to Net Systems for \$5,000,
7 is that correct?

8 A. Yes.

9 Q. And that's one of the companies that your mother dealt
10 with, is that right?

11 A. It's hard for me to remember all the names, but yes.

12 Q. This is a company that your mother dealt with many months
13 prior to Al, is that right?

14 A. I don't know exactly the timeline.

15 Q. This statement date is May 31, 2015, is that correct?

16 A. I am looking for the statement. May 31, 2015, yes.

17 Q. If we can take a look again at 121, that statement date is
18 October 31, 2015, is that right?

19 A. Yes.

20 Q. Now, I am going to ask you to take a look at 3508-3, page
21 13.

22 Now, can you see that?

23 That's another document that you gave to the
24 government, is that right?

25 A. I believe so, yes.

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1 Q. It's another credit card statement similar to the credit
2 card statement of the previous document, is that right?

3 A. Yes.

4 MR. SCHMIDT: I offer that into evidence, your Honor.

5 MR. SOBELMAN: That particular page, no objection.

6 THE COURT: Admitted.

7 (Government's Exhibit 3508-3, page 13 received in
8 evidence)

9 Q. That one has a statement date of April 30, 2015?

10 A. Yes.

11 Q. This has two charges from Net Systems, is that correct?

12 A. Yes.

13 Q. \$750 and \$5,000, is that correct?

14 A. Yes.

15 Q. There was also a Target credit card charge for another
16 company, wasn't there? Do you remember that?

17 A. Yes.

18 Q. Is this one of the pages? Is that up there?

19 A. It's not on my screen.

20 MR. SOBELMAN: Could counsel please identify what he
21 is showing the witness.

22 MR. SCHMIDT: 3508-3, page 6.

23 Q. Is that another document you gave the government?

24 A. I believe so.

25 Q. Do you need to see the front?

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1 MR. SCHMIDT: Could you go to page 5.

2 Q. Is that another credit card statement to your mother?

3 A. Again, I believe so.

4 MR. SCHMIDT: We offer page 6 into evidence.

5 MR. SOBELMAN: That particular page, no objection.

6 THE COURT: That page admitted.

7 (Government's Exhibit 3508-3, page 6 received in
8 evidence)

9 Q. Now, that reflects payments to Impact Rankings for a total
10 of \$7,800, is that right?

11 A. It looks like 9,800.

12 Q. It says total purchases.

13 Yes, on the other side.

14 MR. SCHMIDT: Page 5 is also offered.

15 MR. SOBELMAN: No objection to that page.

16 THE COURT: Page 5 admitted.

17 (Government's Exhibit 3508-3, page 5 received in
18 evidence)

19 Q. Now, when you first talked with your mother about her
20 getting involved with these businesses, you took notes, is that
21 right?

22 A. I did.

23 Q. And when you talked with your mother, she was able to
24 explain to you what she believed was the business that she
25 bought into, didn't she?

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1 A. Yes.

2 Q. And she was actually able to provide great detail of the
3 businesses that she thought she bought into?

4 A. Yes.

5 Q. So when you had a conversation with her about the
6 businesses, she was -- withdrawn.

7 As to her understanding of what she thought she bought
8 into, she was not confused, is that correct?

9 MR. SOBELMAN: Objection.

10 THE COURT: Sustained as to form.

11 Q. When you talked to her and she explained to you what
12 businesses she thought that she bought into, she was not
13 confused, is that correct?

14 A. She couldn't explain it well. So she probably didn't think
15 she was confused.

16 THE COURT: Did you believe she was confused?

17 THE WITNESS: I believed she was confused, yes.

18 Q. Did she tell you what kind of business that she bought
19 into?

20 A. Yes.

21 Q. It was merchant processing, wasn't it?

22 A. I have never heard that term before.

23 Q. It was merchant business commissions, that she would be
24 making money based on the use of, for example, credit
25 terminals?

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1 A. I have never heard of any of that terminology before.

2 Q. Did she explain to you that she would get \$500 per
3 terminal?

4 A. I have never heard that explained that way before.

5 Q. I am going to show you what is marked 3508-1, page 2.

6 Can you see that document?

7 A. I can.

8 Q. Is that your handwriting?

9 A. That is my handwriting.

10 Q. Is that notes that you took during the conversation with
11 your mother?

12 A. Those are notes that I took during my conversation with my
13 mother.

14 Q. Now, does that refresh your recollection whether your
15 mother talked to you about, for example, that she would get
16 \$500 per terminal?

17 MR. SOBELMAN: Objection, your Honor. The witness
18 didn't say that he had a failure of recollection.

19 MR. SCHMIDT: I will do it differently.

20 THE COURT: Sustained.

21 Q. Does that change your mind whether or not your mother
22 explained to you about profiting \$500 per terminal?

23 MR. SOBELMAN: Objection.

24 THE COURT: Ask it directly.

25 Go ahead.

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1 Q. Did your mother tell you that she expected to get \$500 per
2 terminal?

3 MR. SOBELMAN: Objection.

4 THE COURT: I see now.

5 I will allow that not for the truth of the matter
6 asserted, but simply for the fact of whether or not it was
7 said.

8 MR. SCHMIDT: That's what I am asking, your Honor.

9 Q. Did your mother say that?

10 A. Much of what I have here is from my mother's notes that she
11 wrote down that she got from talking to these supposed
12 companies, OK.

13 MR. SOBELMAN: Your Honor --

14 A. She would never use --

15 THE COURT: Go ahead.

16 A. She would never use these terms. I got this from her
17 notes.

18 Q. Did she tell you that she made those notes when she had the
19 conversations with the people that she bought into the business
20 with?

21 A. I'm sorry. Would you repeat, please?

22 THE COURT: Is it your understanding that these notes
23 were written by her during her conversations with the people
24 who were calling her?

25 THE WITNESS: Yes.

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1 MR. SOBELMAN: Your Honor, I think the record is
2 confused. I believe Mr. Kandar testified that these are his
3 notes that were based on her notes. There are multiple levels
4 of hearsay.

5 THE COURT: You're quite right.

6 Clean it up, sir.

7 Q. Your notes are based on conversations with your mother and
8 a review of the notes that she told you she took when she had
9 the conversations with these people, is that correct?

10 A. I actually saw her notes and wrote down my own notes based
11 on her notes. She verbally could never say any of this at the
12 time, and did not, to the best of my recollection.

13 Q. Did she tell you, though, that she wrote those notes?

14 A. She wrote those notes, yes.

15 THE COURT: Wait. Not the notes in the document
16 that's before you.

17 THE WITNESS: These are mine.

18 THE COURT: The notes from which you were writing this
19 down.

20 THE WITNESS: Correct.

21 THE COURT: And those notes, that is her notes, your
22 understanding was were written when?

23 THE WITNESS: When she talked to all of these supposed
24 businesses.

25 THE COURT: All right. I now understand.

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1 If I understand you -- I don't want to put words in
2 your mouth -- your understanding was that, at the time she
3 wrote the notes of which these are your notes, she did not have
4 the capability of using the terms set forth in these notes, is
5 that it?

6 THE WITNESS: Correct.

7 BY MR. SCHMIDT:

8 Q. The terms that are reflected in your notes, did you make
9 those up or did they come from terms that were in her notes?

10 A. They were terms that were in her notes.

11 Q. So she was able to write down what she was told by the
12 people that she was talking to?

13 MR. SOBELMAN: Objection.

14 THE COURT: If you have an understanding in that
15 regard, you may answer.

16 A. She wrote down exactly what they told her.

17 Q. Now, you said that because of her incontinence, she becomes
18 dehydrated frequently?

19 A. Yes.

20 Q. But clearly she is not dehydrated all of the time at that
21 time, correct?

22 A. Correct.

23 Q. And when --

24 THE COURT: Why do you say that? What is that based
25 on?

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1 THE WITNESS: I mean, she would have good days and bad
2 days, I guess.

3 THE COURT: In terms of hydration or in terms of
4 mental ability?

5 THE WITNESS: In terms of mental ability more than
6 hydration, I guess.

7 Q. You first talked to her in November or December 2015 about
8 all of this stuff?

9 A. It was in November I think.

10 Q. When you talked to her she was very upset?

11 MR. SCHMIDT: I will withdraw that question.

12 Q. When you started talking about this, was she upset?

13 A. It's hard to explain.

14 Q. Let me ask you another question.

15 Did she say that the people that she talked to were
16 nice to her?

17 A. Yes.

18 Q. That's one of the reasons that you believed that she was
19 being taken advantage of?

20 A. Yes.

21 Q. I understand.

22 Was it clear when you were talking to your mother that
23 you were upset?

24 A. Yes.

25 Q. Did your mother become upset because of that?

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1 A. Yes.

2 MR. SCHMIDT: I have no further questions, your Honor.

3 MR. PAUL: I have no questions, your Honor.

4 THE COURT: Government.

5 MR. SOBELMAN: Nothing further, your Honor.

6 THE COURT: You may step down, Mr. Kandar. Thank you.

7 You are excused.

8 (Witness excused)

9 THE COURT: Let's give the jury a short break and you
10 will straighten out the matters that you were talking about.

11 Very short break, ladies and gentlemen. We will call
12 you back in a few minutes.

13 (Jury exits courtroom)

14 THE COURT: Straighten out the 165/167 issue.

15 MS. KEARNEY: Your Honor, I have some further argument
16 to make on that point.

17 THE COURT: The objection to 165 was withdrawn.

18 MS. KEARNEY: Correct.

19 167 I don't believe they have any grounds to offer
20 that. It's in a separate notebook. There is no hearsay
21 exception that applies to that notebook.

22 And under Rule 106 --

23 THE COURT: Mr. Schmidt, are you listening?

24 MR. SCHMIDT: Yes, I am.

25 MS. KEARNEY: -- it is only adverse parties that may

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1 request that the full writing be admitted. It is Mr. Schmidt
2 and Mr. Hassen who made the reference to Government Exhibit
3 167.

4 THE COURT: It's Mr. Schmidt and Mr. Hassen?

5 MS. KEARNEY: Who introduced portions of Government
6 Exhibit 167 by having Ms. Thompson read them. And it is only
7 the adverse party that may require the full writings to be
8 admitted.

9 THE COURT: Just a moment. Let me take a look and
10 then I want to look at 167, shocking as that may be.

11 MS. KEARNEY: Rule 106. Exhibit 167.

12 THE COURT: I know.

13 MS. KEARNEY: Too many numbers.

14 MR. SCHMIDT: Your Honor, the government is the one
15 that offered 165.

16 THE COURT: Yes.

17 MR. SCHMIDT: I am now the adverse party to what the
18 government is offering. So, therefore, I have a right to have
19 the complete part to be introduced.

20 THE COURT: I understand what you are saying. Let me
21 look at 167.

22 MS. KEARNEY: Your Honor, you will see, if you look at
23 167, this is a separate notebook. It's titled "Mostly Dream
24 Success to Reality," which Ms. Thompson testified --

25 THE COURT: Wait a minute. I am looking at 167, a

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1 multicolored sheet on the cover.

2 Where are you saying Success Dream to Reality?

3 MS. KEARNEY: The cover of the notebook. So the
4 right-hand side of the multicolored page, page 1, is titled
5 "Mostly Dream Success to Reality." Ms. Thompson testified that
6 Dream Success to Reality was a separate business that she
7 conducted prior to her dealings of A1. It is a separate
8 notebook from Government 165, which contains her notes of her
9 conversations with A1. If you look at the dates in each
10 notebook, 167, the Dream Success to Reality notebook, predates
11 Government Exhibit 165.

12 MR. SCHMIDT: Your Honor --

13 THE COURT: Let me just look at this exhibit and then
14 I will give you a full opportunity.

15 All right. I have looked at it.

16 Mr. Schmidt, these are individual diary entries
17 involving different potential investments. Tell me why, in
18 fairness, they ought to be considered at the same time as 165?

19 Just a moment. I'm sorry. I want to take another
20 look at 165. There was extensive examination by both parties
21 on 165.

22 Yes, sir. Why 167, in fairness, ought to be
23 considered at the same time?

24 MR. SCHMIDT: Your Honor, first of all, 167 was cited
25 six times during her cross-examination. The people mentioned

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1 in 167 were testified to during cross-examination and are
2 mentioned numerous times in 165. 165 is a continuation of 167,
3 including her business of merchant processing. Merchant
4 processing, as 167 shows, began months before any contact with
5 our client. So to just have the names and the issues that are
6 continued in 165, and not the beginning where those names and
7 those issues arose months earlier that are in 167, would then
8 leave an incomplete view of what just went in in 165.

9 For example, July 28, 6 p.m. --

10 THE COURT: Just a moment.

11 Yes, sir. July 28, 2015, 6 p.m.

12 MR. SCHMIDT: Steven Abrams is mentioned there with a
13 referral program and the units that are part of her business
14 that caused her to purchase business services from A1. Her
15 purchases from A1 initially were for business services to
16 assist her in the businesses that she was already involved in.
17 This is one of the businesses she was already involved in.

18 THE COURT: I remember a reference to GoDaddy.

19 MS. KEARNEY: Actually, Ms. Thompson testified that
20 the purchases she made from A1 were for the purchases she had
21 made from what she called Tri-Star and First Trend, which are
22 contained in Government Exhibit 165.

23 MR. SCHMIDT: That's exactly right. We tried to
24 question her about that. That's why we questioned her six
25 times referring to 167, and having her look at 167, and even

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1 read from 167, is because it wasn't services just purchased
2 from Tri-Star; it was also the business that had existed before
3 that includes the names of people, the kind of business that
4 she was involved in.

5 THE COURT: There are a variety of dates here in 167.
6 Are the dates, at least some of the dates the same time period
7 as in 165?

8 MS. KEARNEY: There is one page that is the same time
9 period as 165. The rest predate by several months.

10 MR. SCHMIDT: One is on January 27, which she is
11 talking about the same businesses that are referred to earlier
12 in this document.

13 THE COURT: Where is the January 27? Is that the same
14 overlapping date?

15 MS. KEARNEY: Yes. Page 20. It ends in the Bates
16 stamp with 400. It's the second to last page.

17 If Mr. Schmidt really believes that this belongs with
18 Government Exhibit 165, we will consent to the entry of page 20
19 of 167 along with Government Exhibit 165.

20 MR. SCHMIDT: Your Honor, the government has gotten up
21 here and argued to your Honor that, because we only read some
22 of the things, that's why all of 165 should come in, to show
23 everything, so there is no confusion.

24 167 shows how it all started, including the businesses
25 she had when she started talking to Al. To now get up here and

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1 say that is not part of it, including the names of the people
2 that Mr. Hassen --

3 THE COURT: The names here are different, sir.

4 MR. SCHMIDT: They are not all different. Many of
5 them are the same. There is Leona who is the owner of a
6 company. There is Mr. Abrams that was talked about. I could
7 match a number of times where these same people are mentioned
8 in 165.

9 THE COURT: I am going to allow 167 in under 106.

10 What is the next issue?

11 MS. KEARNEY: Along with 165?

12 THE COURT: Yes. 165 the objection was withdrawn.

13 Let's make the record clear. 165 and 167 are
14 admitted.

15 MS. KEARNEY: Just to be clear, your Honor, we had
16 originally moved pages 1 through, I think, 37. 165 is a
17 50-page document. The latter pages actually contain notes
18 regarding Ms. Thompson's dealings with our office, and so we
19 don't think those should come in.

20 THE COURT: Mr. Schmidt, did you hear that?

21 MR. SCHMIDT: I hear that, except for there are some
22 that do not relate solely to law enforcement. I have no
23 objection to redacting the conversations with law enforcement
24 and leaving the rest in.

25 THE COURT: Ms. Kearney.

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1 MS. KEARNEY: We will come up with a redacted version
2 and run it by Mr. Schmidt and hopefully we can resolve it.

3 THE COURT: 165 comes in subject to an agreement or a
4 ruling by the Court on redactions.

5 167 comes in under 106. 165 comes in because Mr.
6 Schmidt has withdrawn his objection to the admission of 165.

7 (Government's Exhibits 165 and 167 received in
8 evidence)

9 THE COURT: Wasn't there another issue? No, I think
10 that's it.

11 What I propose we do is we bring the jury back. The
12 government will rest. I will excuse the jury until tomorrow.
13 And then I will hear if there are any motions.

14 Let's bring this jury back.

15 I will have them in at 9:00 on Thursday, and we will
16 put on -- if you're going to put your case on, Mr. Schmidt, I
17 take it you will start with Mr. Owimrin and presumably will be
18 able to finish your case tomorrow.

19 MR. SCHMIDT: Other than Mr. Owimrin, we have a
20 few --

21 THE COURT: You said you had the Mr. Porzio expert.

22 MR. SCHMIDT: A summary witness on a few issues will
23 be testifying.

24 THE COURT: What does that mean? What is the summary
25 witness on?

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1 MR. SCHMIDT: Some things, telephone records and some
2 other things, that should take about 15 minutes.

3 MS. FLETCHER: After the jury departs, the government
4 actually has a number of issues to raise with the Court.

5 THE COURT: You said you were going to put documents
6 in before you rest.

7 MS. FLETCHER: Yes.

8 THE COURT: I will say, any other witness, and you
9 will put those documents in.

10 MS. FLETCHER: Yes.

11 THE COURT: So we will handle whatever you have to
12 handle. Does it involve when you rest whatever issues you
13 have?

14 MS. FLETCHER: No, your Honor. We have resolved all
15 issues that need to be resolved before the government can rest.

16 THE COURT: Bring the jury in.

17 (Continued on next page)

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1 (In open court; jury present)

2 THE COURT: Please be seated in the courtroom. Next
3 witness for the government?

4 MS. KEARNEY: The government offers the following
5 exhibits: 465, 467 through 469, 471, 475 through 477, 165 A as
6 discussed amongst the parties, and 167.

7 MR. SCHMIDT: If I may have a moment, your Honor.

8 (Pause)

9 MS. KEARNEY: I am also going to read a stipulation,
10 so perhaps as Mr. Schmidt is looking, I can read it.

11 THE COURT: Go ahead.

12 MS. KEARNEY: It is hereby stipulated and agreed by
13 and between the United States of America, by Geoffrey S.
14 berman, United States Attorney, Kiersten A. Fletcher, Benet J.
15 Kearney, and Robert Sobelman, Assistant United States
16 Attorneys; Andrew Owimrin, by and through his attorneys, Sam A.
17 Schmidt, Esquire and Abraham Abegaz-Hassen, Esquire; and
18 Shahram Katabchi, by and through his attorneys, Kenneth A.
19 Paul, Esquire and Jacob Mitchell, Esquire that:

20 1. If called at trial, Blake Foster would testify as
21 follows:

22 A. Charlene Foster is her mother-in-law.

23 B. Charlene Foster currently lives in a senior living
24 facility in Minnesota, and, from approximately September 25,
25 2015 through October 2016, Charlene Foster lived in a senior

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1 living facility in Wildwood, Florida.

2 C. Sometime between February 2016 and May 2016, Blake
3 Foster found the documents that are marked Government Exhibits
4 101, 102, 103, 104, 105, 106, 107A, 108, 109, 111, 113, and 115
5 in Charlene Foster's apartment in Wildwood Florida.

6 D. After finding the documents that are marked as
7 Government Exhibits 101 through 106, 107A, 108, 109, 111, 113,
8 and 115 in Charlene Foster's apartment, Blake Foster contacted
9 Discover in approximately May 2016 and asked for a copy of
10 Charlene Foster's dispute paperwork to be sent to Blake Foster.
11 In response, Blake Foster received the document marked as
12 Government Exhibit 112.

13 E. When Blake Foster spoke to Charlene Foster about
14 A1 Business Consultants, Charlene Foster told Blake Foster that
15 A1 Business Consultants tried to do Charlene Foster's taxes.

16 It is further stipulated and agreed that this
17 stipulation may be received in evidence at the trial in the
18 above-referenced matter.

19 The government offers that stipulation, which is
20 Government Exhibit 304.

21 THE COURT: Admitted without objection.

22 MS. KEARNEY: And also Government Exhibits 102 through
23 106, 107 A, 108, 109, 111, 113 and 115.

24 THE COURT: Admitted without objection.

25 (Government's Exhibits 304, 102-106, 107A, 108, 109,

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1 111, 113 and 115 received in evidence)

2 MR. SCHMIDT: Your Honor, as to the other exhibits,
3 the only objection I have is to 467. That is based on the
4 objections that we discussed I think prior to trial or just at
5 the beginning.

6 THE COURT: I don't know what 467 is, sir.

7 MR. SCHMIDT: May we have a sidebar just briefly, your
8 Honor?

9 THE COURT: The government, can it be done after the
10 next witness?

11 MS. KEARNEY: I think so. I also neglected to offer
12 112.

13 THE COURT: All right. So all of those are admitted.

14 (Government's Exhibit 112 received in evidence)

15 THE COURT: I'll hear Mr. Schmidt's issue on 467 after
16 the jury is excused.

17 MS. FLETCHER: Your Honor may we have just a moment on
18 this issue?

19 THE COURT: Yes.

20 (Off-the-record discussion)

21 MR. SCHMIDT: Your Honor, I withdraw that objection.

22 THE COURT: Is the record clear now all of those
23 exhibits are admitted.

24 (Government's Exhibits 465, 467-469, 471, 475-477
25 received in evidence)

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1 THE COURT: The next witness for the government?

2 MS. FLETCHER: The government rests.

3 THE COURT: All right. Ladies and gentlemen, you've
4 heard the government rest. As I told you, the evidence is
5 coming in apace. We have some legal matters to handle now.
6 Between the legal matters and lunch, I didn't want you to be
7 sitting around so I am going to excuse you for the day. Please
8 be here by 9:15 tomorrow. Tomorrow we will see if there is
9 going to be a defense case presented by either of the two
10 defendants.

11 As you know, because I told you when we started back a
12 week ago Tuesday, the defendants are never under an obligation
13 to prove anything. The burden is always on the government to
14 prove each defendant's guilt beyond a reasonable doubt, so the
15 defendants don't have to prove anything. It is the government
16 that has to prove the guilt of each defendant beyond a
17 reasonable doubt. So we will see if there is going to be a
18 defense case for either or both of the defendants.

19 Be here tomorrow and make it 9:15. Enjoy the day. It
20 is a beautiful day. Thank you. Keep an open mind.

21 (Jury excused)

22 THE COURT: Please be seated.

23 Are there any motions?

24 MR. SCHMIDT: Your Honor, at this time we move under
25 Rule 29 for a dismissal of the charges against Mr. Owimrin.

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1 THE COURT: What is the basis? There is enough
2 evidence for a reasonable juror to conclude there is guilt
3 beyond a reasonable doubt. I think are two counts against
4 Mr. Owimrin, correct? That is the standard, correct?

5 MR. SCHMIDT: That's correct.

6 THE COURT: Do you have an argument?

7 MR. SCHMIDT: I rest on the record.

8 THE COURT: I am going to deny the motion.

9 MR. PAUL: On behalf of Mr. Katabchi, I, too, will
10 move for a Rule 29 judgment of acquittal with regard to both
11 counts against him for the failure of the government to
12 establish a case that is beyond a reasonable doubt as presented
13 to the jury.

14 THE COURT: Before I rule on that, and I shouldn't
15 have ruled so quickly on Mr. Owimrin's. Does the government
16 want to respond?

17 MS. FLETCHER: Your Honor, only to respond that there
18 is more than sufficient evidence in the record to sustain a
19 conviction with respect to Mr. Owimrin on both Counts 1 and 2
20 and with respect to Mr. Katabchi on both Counts 1 and 2.

21 THE COURT: All right. Having had a full airing of
22 the issues, I deny the motion both by Mr. Owimrin and
23 Mr. Shahram Katabchi. I have, indeed, been listening to the
24 evidence, and I believe a denial is appropriate. I'll see
25 everybody at 9:15 tomorrow.

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1 MS. FLETCHER: When I spoke just before you dismissed
2 the jury about there being several issues to raise with the
3 court, I was hoping to raise them before we all depart for
4 today.

5 THE COURT: Go ahead.

6 MS. FLETCHER: If your Honor would allow that. If
7 your Honor prefers, the government could do that after the
8 lunch break.

9 THE COURT: Let's do it now.

10 MS. FLETCHER: One of the issues raised yesterday with
11 respect to Mr. Shahram Katabchi is that Mr. Paul now intends to
12 call Michael Finocchiaro in the defense's case in chief. We
13 have had some ability to discuss the issues amongst ourselves,
14 and the government wants to just raise a couple of issues we
15 think will likely percolate up to the court now.

16 The first is that Mr. Paul has indicated that he
17 intends to cross-examine Mr. Finocchiaro based on his
18 presumption that Mr. Finocchiaro is either a hostile witness or
19 identified with an adverse party.

20 Your Honor, the government has determined not to call
21 Mr. Finocchiaro. Mr. Paul is evidently calling him because he
22 believes that Mr. Finocchiaro has some relevant helpful
23 testimony for his case, and so he should not be permitted to
24 lead Mr. Finocchiaro. It is Mr. Paul's witness now.

25 THE COURT: Who is Mr. Finocchiaro?

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1 MS. FLETCHER: He was a defendant in this case. The
2 government --

3 THE COURT: He is a defendant in the case.

4 MS. FLETCHER: Yes, your Honor. He entered a guilty
5 plea pursuant to a cooperation agreement. He was on the
6 government's witness list. In an effort, as we made your Honor
7 aware of, in an effort to cut down the time of the government's
8 case, the government elected not to call him. Now I understand
9 Mr. Paul would like to call him.

10 MR. PAUL: He is a cooperating witness, Judge.

11 THE COURT: Go ahead.

12 MS. FLETCHER: Your Honor, the issue arises under 611
13 (c). Once I became aware Mr. Finocchiaro, the defense intends
14 to call Mr. Finocchiaro, I spoke with his counsel. His counsel
15 indicated that Mr. Finocchiaro is willing to testify. I have
16 no reason to think that he is going to be a hostile witness to
17 Mr. Paul and every reason to think that he will cooperate
18 fully. The fact he is a cooperating witness does not render
19 him a witness identified with an adverse party. That would be,
20 for example, if there was a federal agent who they wished to
21 call. That person might, for example, be identified with an
22 adverse party because they would be essentially an agent of the
23 government.

24 Mr. Finocchiaro is not our agent. He was a defendant
25 in this case. He pled guilty pursuant to a cooperation

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1 agreement, but he is not testifying pursuant to that
2 cooperation agreement.

3 THE COURT: I understand that. Surely this issue has
4 come up before. It sounds like everyone knew about this. My
5 notes indicate that Mr. Paul yesterday said that maybe he would
6 call Finocchiaro, and it sounds like he now has decided to.

7 So the parties had some time to think about this. Do
8 you have a case? This would not be the first time this
9 occurred. Does anyone want to give me a case?

10 MS. FLETCHER: I don't have a case. I conferred with
11 a supervisor in our office about this issue. He is looking
12 into it. His view is the same as I just articulated to the
13 court.

14 THE COURT: Under the cooperation agreement, doesn't
15 it say he has to cooperate with the government?

16 MS. FLETCHER: It says he has --

17 THE COURT: And --

18 MS. FLETCHER: -- pursuant to the cooperation
19 agreement, he has to testify in any proceeding at which the
20 government asks him to testify. We are not asking him to
21 testify.

22 THE COURT: I understand. All right. The parties
23 should do some research, as I will, and see if this has been
24 decided before. Mr. Paul, what do you want to say?

25 MR. PAUL: What your Honor raised, he is under a

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1 cooperation agreement.

2 THE COURT: No, but I think what Ms. Fletcher has said
3 is the words of the agreement say, "when called by the
4 government." Apparently that's correct. Is that right?

5 MS. FLETCHER: I don't know that those are the exact
6 words, your Honor, but --

7 THE COURT: You'll get them for me?

8 MS. FLETCHER: Substantively, he is required to
9 testify if he government asks him to.

10 THE COURT: Okay.

11 MR. PAUL: He is coming in under subpoena, which will
12 be served on his lawyer. I have spoken to the lawyer.

13 With regard to his being called as my witness instead
14 of the government calling him as a witness, he is still a
15 witness for the government in the sense he is under a contract
16 with the government as cooperating witness. He is certainly
17 not a defense witness in that sense. He is a cooperating
18 witness signed on by the government. They have chosen not to
19 call him for whatever reason. My questioning of him will be
20 limited in certain regards. I certainly think they will then
21 have a right to cross-examine him, obviously, because I am
22 calling him first.

23 The fact I am calling him and not them, I don't think
24 that that eliminates the fact he should be declared a hostile
25 witness in the sense that given the background of this witness

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1 being called to the stand --

2 THE COURT: Do you have a case for me?

3 MR. PAUL: I will try to find one, your Honor.

4 THE COURT: Let me look at 611.

5 Leading questions should not be used on direct
6 examination except as necessary to develop the witness's
7 testimony. Ordinarily, the court should allow leading
8 questions on cross-examination and, two, when a party calls a
9 hostile witness, an adverse party or a witness identified with
10 an adverse party --

11 MR. PAUL: Correct.

12 THE COURT: Well, he is a defendant. Because he pled
13 guilty doesn't make him not a defendant, in my view.

14 MR. PAUL: I submit, your Honor --

15 THE COURT: He is not an adverse party to that extent.

16 He is an adverse party to the extent he is signed up
17 as a cooperator with the government. I will look and see if I
18 can find cases. The parties should do the same. We'll take a
19 look at some of the 611 (c) cases. My instinct says it is
20 direct. He has been subpoenaed, that is the only way you can
21 get him in here. I don't think that goes one way or the other
22 and he should be treated as any other witness.

23 If it appears he is hostile upon your asking direct
24 questions, I can always declare him a hostile witness. My
25 instinct says direct questions only, not leading, unless it

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1 appears to the court that his answers reflect a hostility to
2 the questioner, but I suggest if there are other judges of
3 higher courts who have taken a look at this, I'll take a look
4 at it, or for that matter coordinate courts.

5 What else?

6 MS. FLETCHER: Just a --

7 THE COURT: If the parties can get me whatever
8 citations they want, I will probably be going to sleep after
9 Mr. Schmidt. Go ahead.

10 MS. FLETCHER: As well as the rest of this table. We
11 will, your Honor.

12 Another issue that is likely to arise just by virtue
13 of this same issue, Mr. Schmidt and I spoke before the court
14 today. I think we're all in agreement that if Mr. Paul calls
15 Mr. Finocchiaro, the government crosses Mr. Finocchiaro. In
16 other words, we get to lead Mr. Finocchiaro.

17 There is some dispute as to whether Mr. Schmidt also
18 gets to cross and lead Mr. Finocchiaro. My reading of 611
19 suggests that Mr. Finocchiaro, consistent with your Honor's
20 gut, is going to be subject to direct questions.

21 THE COURT: Again, the gut test says yes. There has
22 been no conflict between the defendants here at any time.

23 MS. FLETCHER: Exactly, your Honor. The government's
24 position is that like Mr. Paul, Mr. Schmidt should be required
25 to direct examine Mr. Finocchiaro.

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1 THE COURT: I agree with you until now unless I think
2 he is hostile. Mr. Schmidt.

3 MR. SCHMIDT: Your Honor, he is not my witness. If
4 you're saying that --

5 THE COURT: No, but he is not adverse, either.

6 MR. SCHMIDT: He very well may be adverse. That is
7 why I would not be calling him as a witness.

8 THE COURT: Sorry. You are not calling him?

9 MR. SCHMIDT: I am not calling him as a witness. He
10 has adverse things to say about my client. If you're saying
11 that because counsel for co-defendant is calling a witness,
12 then I am restricted to direct, you're basically saying we are
13 trying this case together.

14 We are not. We are separate individuals. We have
15 separate issues and essentially in this case completely
16 separate issues because probably the total amount of time that
17 my client had contact with the co-defendant in this case prior
18 to his arrest I think is one. So we have separate cases,
19 completely separate cases --

20 THE COURT: Yes, but --

21 (Multiple voices)

22 MR. SCHMIDT: -- I don't want him as a witness. His
23 testimony, that witness' testimony is going to be adverse to my
24 client. So I don't know how am I supposed to ask questions to
25 this witness when the government is going to be able to direct

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1 them to the things that they want him to testify to that is
2 adverse to my client, and I can't cross-examine him?

3 That is crazy!

4 MR. PAUL: I agree with Mr. Schmidt. I think he
5 should -- in fact, I think he the order should be after Mr.
6 Fino sits down, is done with my testimony, direct or cross,
7 whatever your Honor rules, Mr. Schmidt has an absolute right to
8 cross him. It is as if Mr. Owimrin is called to the stand, I
9 have a right to cross him. I don't want to limit my discussion
10 with regard --

11 THE COURT: I understand. Ms. Fletcher.

12 MS. FLETCHER: Just to point out that I think
13 Mr. Schmidt appears to be confusing the meaning of the word
14 "adverse" with "has unhelpful things to say about."

15 Just because a witness has unhelpful things to say
16 about a client does not mean he is an adverse party. "Adverse"
17 refers to which side of the "v" you're on. He and Mr. Katabchi
18 are on the same side of the v in this particular case.

19 For example, on direct examination -- I don't presume
20 to know what Mr. Paul's direct examination of Mr. Finocchiaro
21 will be but, in any event, the government on cross will be
22 confined to the scope of direct. So presuming that Mr. Paul
23 does not intend to elicit on direct unhelpful information from
24 Mr. Finocchiaro about Mr. Owimrin, the government will not be
25 permitted to cross Mr. Finocchiaro on the unhelpful information

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1 that Mr. Schmidt fears the government will elicit about his
2 client.

3 THE COURT: All right. You lost me.

4 MS. FLETCHER: It is procedurally complicated, your
5 Honor.

6 THE COURT: Just a moment. (Pause)

7 I agree with your presumption; that is, Mr. Paul will
8 presumably not elicit on his questioning of Mr. Finocchiaro bad
9 stuff about Mr. Owimrin; and, therefore, presuming there is no
10 such bad stuff about Mr. Owimrin adduced by Mr. Paul in the
11 questioning of Mr. Finocchiaro, the government will not be
12 crossing Finocchiaro on the stuff that doesn't exist; that is,
13 the unhelpful information about Mr. Owimrin. I agree with you
14 on that. So where does that take you?

15 MS. FLETCHER: The point I was making, your Honor, is
16 that contradicts the underlying assumption made by Mr. Schmidt
17 that he should be permitted to cross Mr. Finocchiaro. I think
18 I heard him say he should be permitted to cross Mr. Finocchiaro
19 because Mr. Finocchiaro is going to have unhelpful information
20 about his client.

21 THE COURT: Right.

22 MS. FLETCHER: But based on the sequence as I
23 understand it will transpire, when Mr. Paul directs Mr.
24 Finocchiaro --

25 THE COURT: No, no. I don't think Mr. Schmidt was

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1 saying there will be unhelpful information about Owimrin in the
2 record after Mr. Paul's direct examination. I think what
3 Mr. Schmidt was saying is he doesn't think Finocchiaro is going
4 to be helping his client.

5 MS. FLETCHER: I suspect he won't.

6 THE COURT: That is Mr. Schmidt's point.

7 MS. FLETCHER: I don't think Mr. Finocchiaro will help
8 either defendant, but that is for Mr. Paul to determine.

9 THE COURT: No, but that is what Mr. Schmidt, that is
10 why he is saying he is adverse because he won't like what
11 Finocchiaro has to say about Owimrin.

12 And your point is it is the v that counts?

13 MS. FLETCHER: Yes, your Honor.

14 THE COURT: Not helpful or unhelpful?

15 MS. FLETCHER: Yes.

16 THE COURT: The parties should get me what they can.

17 What else? And you have my instinct and you also have
18 611 (a). The court should exercise reasonable control over the
19 mode and order of examining witnesses in presenting evidence so
20 as to make these procedures effective for determining the
21 truth, avoid wasting time and to protect witnesses from
22 harassment and undue embarrassment, and I intend to fully
23 exercise those powers. Next?

24 MS. FLETCHER: Your Honor had requested yesterday that
25 the parties jointly prepare a verdict form --

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1 THE COURT: Yes, ma'am.

2 MS. FLETCHER: -- for the court. I have conferred
3 with Appeals in our office and with the supervisors handling
4 this case about the verdict form here, and we would just ask
5 for your Honor's indulgence to give us another day --

6 THE COURT: Of course.

7 MS. FLETCHER: -- for the verdict form?

8 THE COURT: Of course.

9 MS. FLETCHER: Count 2 in particular is a conspiracy
10 with two separate objects, and we want to be sure that the form
11 reflects what it needs to reflect.

12 THE COURT: And before you give it to me, run it by
13 the defense.

14 MS. FLETCHER: Of course, we will.

15 THE COURT: What else?

16 MS. FLETCHER: May I have a moment, your Honor?

17 THE COURT: Yes.

18 (Off-the-record discussion)

19 MS. FLETCHER: Your Honor, I am reminded that in
20 reevaluating Mr. Finocchiaro's proposed testimony, and I
21 candidly reviewed my notes for the purposes of preparing my
22 cross-examination of that witness, it is clear there are
23 certain what I would call opinion statements by Mr. Finocchiaro
24 that Mr. Paul may seek to elicit from him in direct
25 examination. Again I am guessing here because I don't know

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1 exactly why he is calling this witness.

2 But, for example, Mr. Finocchiaro told the government
3 during one of his meetings that he was surprised to see Shahram
4 Katabchi on the indictment in this case because he only had two
5 or three months of involvement with him. The government would,
6 of course, agree that Mr. Finocchiaro can describe his
7 involvement with Mr. Katabchi, but that his opinion as to
8 whether Mr. Katabchi should or should not be in the indictment
9 and/or his surprise upon seeing him in the indictment is not
10 testimony that is admissible or should be put before the jury.

11 There are several other statements like that by Mr.
12 Finocchiaro; in particular, statements about the involvement of
13 lawyers and his understanding of what the lawyers were doing.

14 THE COURT: You mean defense lawyers in this
15 indictment?

16 MS. FLETCHER: No, your Honor. Your Honor will recall
17 that in connection with pretrial motions, we moved in limine to
18 exclude certain exhibits?

19 THE COURT: I do remember.

20 MS. FLETCHER: Mr. Paul sought to offer --

21 THE COURT: Right.

22 MS. FLETCHER: There was an effort during
23 Mr. Sinclair's cross-examination to further question
24 Mr. Sinclair about the retainer that Olive Branch had with
25 their law firm Sarmasti, PLLC and with the extent of his

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1 involvement in their company.

2 The issue here is while your Honor has precluded the
3 communications between Mr. Sinclair and the outside attorneys,
4 the government suspects Mr. Paul is again going to seek to
5 elicit this from Mr. Finocchiaro, you communicated with
6 lawyers, you came to some conclusion whether you were breaking
7 the law; and, therefore, how could my client have come to a
8 different conclusion?

9 THE COURT: Mr. Paul is shaking his head vigorously,
10 "negative" now. Mr. Paul?

11 MS. FLETCHER: That is helpful.

12 THE COURT: Let me hear the litany of issues.

13 MS. FLETCHER: Your Honor, those are essentially the
14 categories. The government is trying to ascertain what
15 relevant testimony the defense intends to elicit from Mr.
16 Finocchiaro that is not just to impeach him, and these are the
17 categories of things that the government can conceive of, all
18 of which raise serious red flags for the government in terms of
19 their admissibility.

20 THE COURT: Mr. Paul.

21 MR. PAUL: It is my understanding the government on
22 direct examination of Mr. Sinclair opened the door with regard
23 to attorneys being hired, specifically Mr. Vafa Sarmasti. That
24 is why I attempted to question Mr. Sinclair beyond that opening
25 of the door by the government.

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1 With regard to exhibits --

2 THE COURT: Which I believe I stopped.

3 MR. PAUL: You didn't completely because I think you
4 allowed a limited numbers of questions of Mr. Sinclair dealing
5 with Mr. Sarmasti handling complaints filed by customers or
6 victims, and that I showed him the exhibit, but we didn't go
7 through all the tabs for obvious reason that your Honor pointed
8 out, it would be too time consuming. I limited my questions.
9 I don't expect to go beyond that with Mr. Finocchiaro.

10 So I intend to ask him similar questions of which were
11 permitted with Mr. Sinclair.

12 THE COURT: We'll take a look when it comes. I
13 certainly don't care about Finocchiaro's opinions of surprise
14 that somebody is indicted or not. The issue is not for Mr.
15 Finocchiaro.

16 MR. PAUL: I was surprised, too, so we're in the same
17 boat when my client was indicted.

18 THE COURT: I don't understand that comment. What I
19 am saying is I don't care -- it would not be admissible
20 evidence for this jury to hear whether Finocchiaro was
21 surprised that somebody was indicted.

22 MR. PAUL: I don't intend to ask him.

23 THE COURT: All right. Fine.

24 MS. FLETCHER: Relatedly, your Honor, the government's
25 position is Mr. Finocchiaro would also not be permitted to

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1 testify about what his internal conclusions were about whether
2 he was breaking the law or whether he was relying on counsel in
3 ensuring they were not breaking the law.

4 As the government understands it, Mr. Finocchiaro, to
5 the extent he had those internal musings, did not communicate
6 those musings to Mr. Katabchi. There should be no inquiry into
7 his opinions as to whether he was following the advice of
8 lawyers.

9 THE COURT: Mr. Paul.

10 MR. PAUL: I am not presenting an advice of counsel
11 defense here, Judge, so I don't know why the government is
12 going crazy here. I am simply going to be asking Mr.
13 Finocchiaro questions about how he responded in certain
14 proffers.

15 THE COURT: How he responded to?

16 MR. PAUL: In certain proffers provided to the
17 government when he was attempting to cooperate as well as after
18 he was signed on as a cooperating witness. I am not presenting
19 a defense of advice of counsel. There is no, as we admitted,
20 there is no connection between my client and Mr. Sarmasti. So
21 clearly I am not relying on that as a defense. So I don't know
22 what the government's -- excuse my expression --

23 MS. FLETCHER: Your Honor, without, and I don't expect
24 Mr. Paul to preview this, but if he is going to be questioning
25 Mr. Finocchiaro about statements he made during Mr.

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1 FInocchiaro's proffers with the government, he can only do that
2 if he is seeking to impeach Mr. Finocchiaro in some way. As I
3 am sure Mr. Paul knows, he is not permitted to call a witness
4 solely for the purpose of impeaching him.

5 MR. PAUL: I intend to call Mr. Finocchiaro so that he
6 can testify as to what his role was at Olive Branch, how he was
7 partners with Mr. Sinclair, how he was involved with
8 charge-backs, how he communicated with my client in advising
9 him to conduct himself with regard to charge-backs, very
10 similar questions of what I've asked Mr. Sinclair. That is
11 pretty much the scope of my questions.

12 Does he have a cooperation agreement with the
13 government? Is he expecting X number of jails as a consequence
14 of his taking the plea?

15 Those kind of questions I think are permissible. The
16 fact the government chose not to call him, that is their
17 choice. I don't think I should be restricted by that, and I
18 intend to ask him the questions on the direct examination, if
19 that is what your Honor rules, bringing out that kind,
20 eliciting that kind of testimony.

21 MS. FLETCHER: Your Honor, the government sees no
22 problem with that outline of questioning. That is perfectly
23 permissible. I don't know how it is helpful, but it is
24 perfectly permissible.

25 MR. PAUL: That is for me to decide.

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1 THE COURT: Obviously. You didn't have to say it.

2 MS. FLETCHER: The one thing I heard Mr. Paul say, and
3 I don't understand him to be saying that he is going to elicit
4 this testimony from Mr. Finocchiaro, but obviously the
5 government has decided not to call Mr. Finocchiaro. Presumably
6 that is something that will be known amongst the parties and
7 not known to the jury. I don't want the jury --

8 THE COURT: What, what will not be known?

9 MS. FLETCHER: The fact the government decided not to
10 call him.

11 THE COURT: That is not irrelevant.

12 MS. FLETCHER: That is the government's position, your
13 Honor.

14 THE COURT: However, it is clear that he is a witness
15 for the defense and the government has not called him.

16 MS. FLETCHER: Understood, your Honor.

17 THE COURT: But the issue of the government cogitating
18 over whether or not to call Finocchiaro, deciding not to is not
19 for this jury, assuming there was cogitation.

20 MR. SCHMIDT: The government, unless I misheard,
21 seemed to indicate that Mr. Finocchiaro believes that when he
22 was conducting the business at Olive Branch, did not think he
23 was breaking the law.

24 Indeed, if he said that to the government, that would
25 be Brady material, not obviously admissible, but it would be

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1 Brady material for the defense to receive to further explore
2 that issue. I have not seen that, I think, in the 3500
3 material unless I missed it.

4 MS. FLETCHER: It is in the 3500 material. He says,
5 in sum and substance, we thought we had a legal tussle. We
6 know what we were doing was wrong, but we had lawyers in
7 involved so we thought we had a legal tussle.

8 MR. PAUL: Why is that not permissible to be asked?

9 MS. FLETCHER: He asks the witness, who is not a
10 lawyer, to draw a legal conclusion.

11 MR. PAUL: I thought he was skirting, like
12 Mr. Sinclair was testifying, following these rules, somewhat
13 going over the line, sometimes not going over the line. By
14 them hiring a lawyer, they thought, in their minds, they were
15 skirting any criminal activity or the law enforcement would not
16 come back to haunt them.

17 THE COURT: That isn't an advice of counsel argument.

18 MR. PAUL: I am not relaying that to my client. That
19 has to do with the witness testifying. I am not claiming my
20 client acted under any advice or feeling because they had a
21 lawyer, he was necessarily doing something -- it is this
22 witness.

23 MS. FLETCHER: What Mr. Paul just said is precisely
24 why the government is in a stink about this issue because it
25 appears Mr. Paul is trying to do with Mr. Finocchiaro exactly

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1 what your Honor precluded him from doing with respect to the
2 lawyers retained by Mr. Sinclair and Mr. Finocchiaro.

3 Whether Mr. Finocchiaro believed he was following the
4 law or not is of no moment to Mr. Katabchi's state of mind
5 because, as the government understands, there is no evidence
6 that Mr. Finocchiaro ever communicated that to Mr. Katabchi.

7 It is essentially putting before the jury that putting
8 aside what Mr. Katabchi thought, that Mr. Finocchiaro at one
9 point thought he had an advice of counsel defense, or at the
10 minimum a mistake of law, both of which the court, the
11 government expects, would instruct the jury are not to be
12 considered by them. There is no advice of counsel defense for
13 Mr. Katabchi and mistake of law is not a defense.

14 So whether Mr. Finocchiaro was confused about what the
15 law was or believed he had a legal hustle is confusing for the
16 jury, is not relevant to Mr. Katabchi's state of mind, and
17 presents exactly the same type of issues that the government
18 raised --

19 THE COURT: No. I intend to agree.

20 Mr. Paul, I don't want the jury to be cogitating on
21 whether or not this whole thing may be legal in the view of
22 some other lawyer and that they acted, Finocchiaro acted in
23 reliance on some other lawyer's view of the legality. That is
24 not for this jury. I don't want a scent of that in here.

25 MR. PAUL: I won't be arguing that. I will be arguing

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1 this was just one of the many rules, quote-unquote, that
2 Sinclair and Finocchiaro thought they had basically to cover
3 their tracks.

4 THE COURT: What do you mean, "rules"?

5 MR. PAUL: Well, Sinclair told us that they had these
6 so-called rules in place that basically no one followed,
7 certainly not Mr. Sinclair.

8 THE COURT: Yes.

9 MR. PAUL: And that was, in essence, kind of keeping
10 it within a certain framework of what they were doing, not to
11 cross the line, of which Mr. Sinclair bounded it many times.

12 Nevertheless, there was some line drawn, some boundary
13 in their minds.

14 THE COURT: You can ask him about what rules governed
15 their conduct.

16 MR. PAUL: Yes, and in addition to that, they hired a
17 lawyer to handle these complaints, and in Finocchiaro's mind at
18 least, and I think Mr. Sinclair even testified to this, they
19 thought this was a way to get around law enforcement asking any
20 questions. Oh, well, you have a lawyer handling these matters.

21 THE COURT: I don't think Sinclair testified to that.

22 MS. FLETCHER: He didn't, Judge.

23 MR. PAUL: Sinclair testified many times that they did
24 not want --

25 THE COURT: Do you have the transcript pages so I can

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1 get into the area?

2 MR. PAUL: No, but he testified, I am sure your Honor
3 will recall, staying off the radar in terms of law enforcement.

4 THE COURT: Right.

5 MR. PAUL: This was one of the ways, in his mind, in
6 Finocchiaro's mind, they were staying off the radar.

7 THE COURT: Okay.

8 MR. PAUL: And that I think is appropriate to elicit
9 from the witness.

10 THE COURT: They wanted to stay off the radar?

11 MR. PAUL: Correct.

12 THE COURT: You can do that.

13 MR. PAUL: That is all I am intending to do.

14 THE COURT: I am no so sure. I'll see everybody
15 tomorrow. I think you have a sense of the court's rules, sir,
16 and I think you'll stay off the radar, correct?

17 MR. PAUL: I will make every effort.

18 THE COURT: Thank you.

19 MR. SCHMIDT: Get a good night's sleep, your Honor.

20 THE COURT: Let's try to be here, I told them 9:15.
21 Really seriously, this whole thing is serious, Mr. Schmidt, try
22 to be as efficient as possible. I am giving you truly fulsome
23 time here. You have a paralegal and two lawyers. You have
24 fulsome time. I expect the result to be an efficient use of
25 your time with Mr. Owimrin.

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1 MR. SCHMIDT: My goal is to be very efficient, but
2 that does not mean it won't take a long time. I have a lot to
3 talk about.

4 THE COURT: Your estimate I think to the court was
5 four to five hours -- no. I am sorry -- three to four hours.

6 Efficiency!

7 MR. SCHMIDT: Absolutely.

8 (court adjourned until Thursday, November 1, 2018, at
9 9:15 am)

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